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THE MEDIEVAL EMPIRE.

THE MEDIEVAL EMPIRE

BY
HERBERT FISHER
FELLOW AND TUTOR OF NEW COLLEGE, OXFORD

VOLUME I

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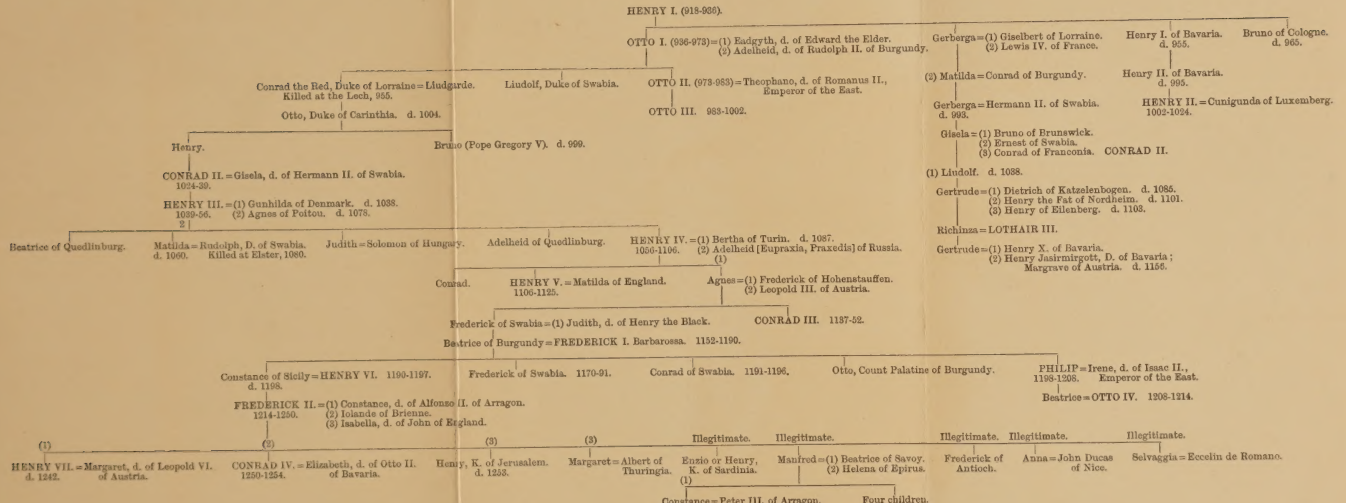
ABBREVIATIONS.

D.S.P. = Deutschenspiegel.
D.V.G. = Deutsche Verfassunggeschichte.
D.W. = Deutsches Wirthschaftsleben.
H.B. = Huillard-Bréholles, Historia Diplomatica Frederici II.
F.D.G. = Forschungen zur Deutsche Geschichte.
H.E.L. = History of English Law, by Pollock and Maitland.
K.Z. = Geschichte der Kaiserzeit.
L.L. = Monumenta Germaniae. Leges.
M.B. = Monumenta Boica.
S.S. = Monumenta Germaniae. Scriptores.
Ssp. = Sachsenspiegel.
Swsp. = Schwabenspiegel.
Zeits. f. d. A. = Zeitschrift fur Deutsches Alterthum.

THE SAXON, FRANCONIAN, AND HOHENSTAUFFEN IMPERIAL HOUSES.


HENRY I. (918-936).
OTTO I. (936-973)=(1) Eadgyth, d. of Edward the Elder.
(2) Adelheid, d. of Rudolph II. of Burgundy.
Gerberga=(1) Giselbert of Lorraine.
(2) Lewis IV. of France.
Henry I. of Bavaria. d. 955.
Bruno of Cologne. d. 965.
Conrad the Red, Duke of Lorraine=Liudgarde. Killed at the Lech, 955.
Liudolf, Duke of Swabia.
OTTO II. (973-983)=Theophano, d. of Romanus II., Emperor of the East.
(2) Matilda=Conrad of Burgundy.
Henry II. of Bavaria. d. 995.
OTTO III. 983-1002.
Gerberga=Hermann II. of Swabia. d. 993.
HENRY II.=Cunigunda of Luxemberg. 1002-1024.
Otto, Duke of Carinthia. d. 1004.
Gisela=(1) Bruno of Brunswick.
(2) Ernest of Swabia.
(3) Conrad of Franconia. CONRAD II.
Henry.
Bruno (Pope Gregory V). d. 999.
(1) Liudolf. d. 1038.
CONRAD II.=Gisela, d. of Hermann II. of Swabia. 1024-39.
Gertrude=(1) Dietrich of Katzelenbogen. d. 1085.
(2) Henry the Fat of Nordheim. d. 1101.
(3) Henry of Ellenberg. d. 1103.
HENRY III.=(1) Gunhilda of Denmark. d. 1038.
(2) Agnes of Poitou. d. 1078.
Richinza=LOTHAIR III.
Gertrude=(1) Henry X. of Bavaria.
(2) Henry Jasirmirgott, D. of Bavaria; Margrave of Austria. d. 1156.
Beatrice of Quedlinburg.
Matilda=Rudolph, D. of Swabia. d. 1060. Killed at Elster, 1080.
Judith=Solomon of Hungary.
Adelheid of Quedlinburg.
HENRY IV.=(1) Bertha of Turin. d. 1087. 1056-1106. (2) Adelheid [Eupraxia, Praxedis] of Russia.
Conrad.
HENRY V.=Matilda of England. 1106-1125.
Agnes=(1) Frederick of Hohenstauffen.
(2) Leopold III. of Austria.
Frederick of Swabia=(1) Judith, d. of Henry the Black.
CONRAD III. 1137-52.
Beatrice of Burgundy=FREDERICK I. Barbarossa. 1152-1190.
Constance of Sicily=HENRY VI. 1190-1197. d. 1198.
Frederick of Swabia. 1170-91.
Conrad of Swabia. 1191-1196.
Otto, Count Palatine of Burgundy.
PHILIP=Irene, d. of Isaac II., 1198-1208. Emperor of the East.
Beatrice=OTTO IV. 1208-1214.
FREDERICK II.=(1) Constance, d. of Alfonso II. of Arragon.
1214-1250. (2) Iolande of Brienne.
(3) Isabella, d. of John of England.
Illegitimate.
Illegitimate.
Illegitimate.
Illegitimate.
Illegitimate.
HENRY VII.=Margaret, d. of Leopold VI. of Austria. d. 1242.
CONRAD IV.=Elizabeth, d. of Otto II. of Bavaria. 1250-1254.
Henry, K. of Jerusalem. d. 1253.
Margaret=Albert of Thuringia.
Enzio or Henry, K. of Sardinia.
Manfred=(1) Beatrice of Savoy.
(2) Helena of Epirus.
Frederick of Antioch.
Anna=John Ducas of Nice.
Selvaggia=Eccelin de Romano.
Constance=Peter III. of Arragon.
Four children.

THE MEDIEVAL EMPIRE.

INTRODUCTION.

"Cette histoire n'est donc presque autre chose qu'une vaste scène de fai blesses, de fautes, de crimes, d'infortunes, parmi lesquels se voit quelques vertus et quelques succès, comme on voit des vallées fertiles dans une longue châine de rochers et de précipices; et il y en est ainsi des autres histoires."

Voltaire, *Annals de l'Empire*, c. vi.

VOLTAIRE, summing up the verdict of his own age, said of the Holy Roman Empire, that it was neither holy nor Roman nor an empire. Like some belated masquerader, that ancient institution, bedecked in its curious and shabby tinsel, had blundered out into the full sunlight of intelligent eighteenth century scorn. Its army was exposed at Rossbach. Its legislature, the Diet of Regensburg, had long invited ridicule by its tedious and impotent self-importance. When, in 1757, an imperial notary came to the Prussian envoy, Baron von Plotho, to present an official intimation that the kingdom of Frederick the Great had been put to the ban of the empire, the baron, "that very commendable parliamentary mastiff," coming out in his dressing-gown, ordered his servants to fling the notary down stairs.[1] The young Goethe found the imperial court of

[1] Carlyle, *Frederick the Great*, bk. xviii., c. i. 7.

Wetzlar twenty thousand cases in arrear, and Mirabeau, who knew Germany, said that there was a policy in this studied inaction, for a court which has no power to execute its decisions is well advised in never coming to a decision at all. Of one thing only the empire was fruitful. Its official documents were monuments of unending pedantry, and ten voluminous memoirs were composed upon the question as to whether a particular ecclesiastical delegate had the right to occupy a particular seat.[1] Every German who had any stuff in him felt the absurdity of the Gothic tumble-down dwelling in which he had been condemned to pass his days. The men of action, like Stein of Nassau and Scharnhorst of Hanover, took service with Prussia. The men of thought escaped to the serene climate of antiquity, or to the sparkling literature of France, or else they drank in deep draughts of romance from Milton and from Shakespeare. The interest in the medieval poetry of Germany was not revived until the epoch of the revolutionary wars, when Arnim and Brentano advertised their countrymen of the neglected treasures of German song. The history of Germany had ceased to attract the better minds, although good work was done in special departments, as, for instance, by Olenschlager and Putter, who expounded the constitution, and by Möser, who exhumed the antiquities of Osnabrück. But the researches of these men and their contemporaries were strictly subservient to the interests of the antiquarian or the practical jurist, and in 1795 Herder pertinently asked, "Why have we not yet got a history of the Germans?" Herder's own answer to this question is too fanciful to record, but it was true enough that there was as yet no history of Germany

[1] Rambaud, *Les Français sur le Rhin.*

which could instruct the mind or stir the pulse of the people.[1]

The Napoleonic wars in the realm of fact, and the Romantic movement in the realm of fancy, set men seeking for the history of the Germans. Where was it to be found? Herder, who brought into Germany that philosophic method of treating the past, which had been so brilliantly expounded beyond the Rhine by Montesquieu and by Voltaire, and who did more to breathe life into the dry bones of history than any German except Niebuhr, indicates one very obvious answer. The empire was a huge mistake, and had involved Germany in unending political shame. There was no profit in studying the political history of this non-national empire, with its coronation garments cut after the Spanish fashions of Charles V. The true history of Germany was social and economic, not military. There was a type of character, simple, honest, loyal, poetic, which belonged to the Germans, and which had been evolved in the course of German history. That was worth studying, and so too were the social and moral differences between one part of Germany and another.

It was also natural to the philosophers of Weimar to conclude that the seeds of progress were generally sown within town walls, and there was much in history to encourage that conclusion. After all, what had the greatest empire achieved for civilization in comparison with Athens and Florence and Weimar? Yet the Athenians lost an empire almost as soon as they gained it. Florence never acquired the territory of a

[1] *Herder Werke*, vol. xiii., pp. 222-26; Giesebrecht, *Die Entwicklung der modernen deutschen Geschichtswissenschaft;* Sybel, *Hist. Zeitschrift*, vol. i.; Wegele, *Geschichte der deutschen Historiographie.*

third-rate German State, and the most exciting event at Weimar was a new piece at the court theatre, or the advent of a new pilgrim to the poet's shrine. "The towns," said Herder, "have been the standing camps of culture, the laboratories of industry, the schools of statesmanship, without which this land would still have remained a desert." He, then, who would hold the clues of progress must study the history of the towns, for the nobles of the Middle Ages were after all nothing but barbarians, the arts do not thrive in the charged climate of military passion, and civilization has the best chance when the political temperature is low.[1]

The age of the German cities, as Ranke afterwards pointed out, was the fourteenth century, but that did not prove the most attractive period to the Germans, whose new creed of patriotism was on the look-out for historical title-deeds. "Sanctus Amor patriae dat animum" was the motto of the *Monumenta Germaniae*, which was appropriately founded by Stein the liberationist; but there was little in the *bürgerliche Zeit* of the fourteenth century, by which the love of country, as Stein understood it, could be trained and nourished. The enthusiasts for German unity looked back to an earlier time, during which the empire was a vigorous reality, and they found it to be full of the most alluring romance. The Romantics exhumed the saga and the poetry of the early Middle Ages, and rediscovered that long gallery of picturesque and heroic figures which begins with Henry the Fowler, "the German Theseus," and ends with Conradin. The

[1] Herder, *Ideen zur Geschichte der Menscheit*, bk. xx., c. 5; Haym Herder, vol. ii., p. 232; Von Below, *Die Städtische Verwaltung des Mittelalters*, *Hist. Zeitschrift*, *Neue Folge*, vol. xxxix., p. 396.

true history of Germany was the history of the Medieval Empire. It was then only that the political genius of the race was fully displayed, that Germany took its proper place among the nations of the West. Von Raumer's picturesque book is the first tribute of the romantic spirit to the history of the Imperial Age.

There were others, again, who magnified the German States, and held that the story of the princely territories was the main thread in the development of the nation. Had not the princes sheltered the Reformation? Had not Frederick II. of Prussia modernized the German spirit? Had not his princely power been consolidated by all the influences of progress—the victory of the Teuton over the Slaves, the Roman law, the reformed religion? Was not Prussia indicated by the hand of fate as the champion of Germanic liberty and union? Was not there more civic education to be gained from the study of local history, which had built up the character of the German race, than from the contemplation of those imperial fantasies which had passed over the surface of national life as swift-driven clouds across the sky, or as seagulls which cast a flying shadow on the ocean? If history, as Möser pleaded, was to be written for the political instruction of the ploughman, it would clearly do well to eschew soaring themes, and to appeal to provincial sentiment.[1] And the story of the brothers Grimm, with their deep enthusiasm for Hesse, persisting through the humiliating interlude of the Westphalian kingdom, demonstrates the reality of this territorial patriotism. When Jacob Grimm was practically exiled to Göttingen in 1829, his inaugural lecture was significantly entitled

[1] Möser, *Osnabrücker Geschichte*, Vorrede.

De desiderio Patriae.[1] He was, in fact, first and foremost, a Hessian.

The generation of the Romantics did wondrous feats, and Giesebrecht, who came out of the scientific workshop of Von Ranke with ampler and more exact knowledge, inherited much of their momentum. His *History of the Imperial Age* is based upon the most complete critical examination of the authorities, and there is not a fact which has escaped the microscope; but for all its elaborate learning, it is the narrative of the poet rather than of the political critic. The German hegemony of the imperial age is accepted as the noblest and most educative epoch in the history of the Teutonic race. It is assumed that the imperial title not only added to the prestige, but also fortified the power of the German king; that the empire rescued Italy from hopeless moral and political decadence, created German unity, promoted culture, purified the Papacy, called Denmark, Bohemia, Poland, Hungary into the circle of Latin civilization. But this glorification of German hegemony did not pass unquestioned. The Slaves and Czecks naturally quarrelled with one hypothesis, the Prussians with another, while the historian of law and institutions was easily able to put his finger upon the fatal blot which marred the fairness of the picture.[2]

The Romantics of the opening century had not paid that minute attention to the development of German law and institutions, the importance of which has since been so amply recognized. Jacob Grimm,

[1] *Kleinere Schriften*, vi., p. 411 ff.

[2] J. Lepär, "Ueber die tendenz von Giesebrechts Geschichte der deutschen Kaiserzeit": *Abh. der Kön. Böhm. Gesell. der Wiss*, 6^te^ *Volge*, vol. i.

indeed, wrote a famous work upon the antiquities of German law, and began to publish the *Weisthumer*, or legal decisions and custumals of the Middle Ages; but to him the revelation of these curiosities was like an epilogue to the fairy tales, disclosing the rough home-spun of old German law, with its quaint, poetic symbolisms, its antique rhythms and alliterations and iterations, its open-air simplicity and racy humours.[1] Yet, in reality, the seven volumes of the *Weisthumer* are the most powerful indictment against the political system of the empire, for they exhibit the German law of the later Middle Ages in all its primitive disarray. They show that the deep soil of national custom had hardly been stirred by the harrow of government.

Waitz's *Constitutional History* is a more conscious and complete commentary upon imperial history. As we march through that vast and orderly museum of desiccated antiquities, we see how justice escaped from the hands of the emperors to the counts, how legislation ceased, and how the Carolingian fabric rapidly fell to pieces. We are invited to look beyond the shining tableau of imperial enterprise to the dark background of constitutional dissolution. Nor have political critics been wanting. "There is yet," wrote Von Sybel in 1859, when criticising Giesebrecht,[2] "a third task for the historian, which lies between the critical sifting of the material and the construction of artistic form. I mean that the subject should be grasped by the intellect, and treated according to

[1] Cf. the characteristic article, "Von Poesie im Recht," *Kleinere Schriften*, vi., p. 152 ff.

[2] Von Sybel, "Uber die neueren Darstellungen der deutschen Kaiserzeit."

political and moral principles." The Prussian historian was, in fact, pleading for a detached judgment of the Imperial Age, which should be based upon the results of modern political experience. In 1862 Ficker's lectures at Innsprück on "The German Empire in its Universal and National Relations," gave Von Sybel the opportunity of illustrating his meaning. In a stirring political essay on "The German Nation and the Empire," he argued that "the imperial policy had been the grave of national welfare," and that Charles the Great, Otto I., and Henry III. were the chief criminals. The substantial interests of the German people had been sacrificed to the chimera of universal rule, and to the fatal connection between the empire and the Church, while the only sovereigns of the Middle Ages who had understood the real needs of their country were the "ecclesiastical indifferents," Henry I. and Conrad I., who, according to Giesebrecht, had debased the empire from its sacred height.

Von Sybel's essay was a summary affair, defaced by political prejudice, arbitrary, unsympathetic, and essentially modern. Amongst other things, he entirely failed to make out his contention that the German contemporaries of Otto I. viewed the imperial policy with disfavour. Yet for all that it was a great manifesto, and surely few more eloquent and masterly political tracts can ever have been written.

A foreigner, who wishes to inform his judgment upon the issue raised in this controversy between two professors nearly forty years ago, is provided with ample assistance from the many admirable works which have appeared dealing with this epoch. Perhaps there is no period of medieval history for which the primary authorities have been so carefully edited, and

for which the secondary authorities are so abundant and trustworthy. This in itself is one of the reasons which have induced me to re-open an old question. There is another reason. The imperial age of German history, beginning with Otto I. and ending with Frederick II., has a natural unity. Within this compass two great questions affecting two great peoples are decided. There is to be no united Italian people. There is to be no united German people. During this period an experiment was tried of gathering the German and Italian peoples under the hegemony of a single ruler, and it failed. In 1306 a French lawyer, Pierre du Bois, is suggesting to his master, Philip the Fair, that he should revive the empire of Charles the Great, and compensate the German princes at the expense of the ecclesiastical principalities. A Talleyrand of the fourteenth century is whispering to a Napoleon of the fourteenth century schemes which are based upon the political humiliation of the German people.[1] With the downfall of the Hohenstauffen dynasty, the history of Europe enters into a new phase. The old sanctified polity of Western nations dissolves away into the most nebulous of figments, —Germany, broken into a loose federation of princes and cities; Italy, broken by the Neapolitan kingdom, the Papal States, the cities and principalities of the North; France, concentrated, alert, ambitious, with a French dynasty in the south of Italy, and covetous eyes set upon the imperial crown.

In this essay I do not aspire to recount the narrative of the empire, or to instruct trained historians. Nor

[1] *Hist. litt. de la France*, t. xxvi.; *Pierre du Bois légiste*, par M. Renan. Cf. Boutaric, *La France sous Philippe le Bel*; and Sorel, *L'Europe et la Révolution Française*, t. i.

do I propose to trace the history of the imperial idea, which Mr. Bryce has exhibited in a work which it would be impertinence in me to commend. My object is to examine the working of the imperial idea during that portion of medieval history when, having assumed a definite theological shape, it operated as a powerful influence over the destinies of Germany and Italy. I wish to see how the machine of imperial government worked in these countries from the revival of the empire by Otto I. to the downfall of the Hohenstauffen dynasty. It seemed, however, necessary by way of introduction to explain why the empire survived at all, and why it was revived in 962. Here I am conscious of trespassing upon Mr. Bryce's ground, and I hope that those of my readers who are familiar with his work will spare themselves the trouble of reading my opening chapter, which, though written independently, does not, I fear, add anything of material importance. I have also to apologize for a chapter upon the relations of the emperors to the city of Rome, which again infringes upon Mr. Bryce. My excuse is that no account of the imperial dealings in Italy would be complete without it; but even so I should probably have abstained from including the chapter, had it not been written before the English translation of Gregorovius had appeared.

It seemed necessary, for the sake of clearness, to treat Germany and Italy separately. I have therefore sketched the condition of Germany at the beginning of the period, and then examined the problem created by the affinities and antagonisms of the four German races (excluding Lotharingia and Burgundy, which although nominally parts of the empire, did not in reality enter much into imperial politics), with a view

to discovering how far these antagonisms and affinities tended to obstruct and further the imperial mission. It then seemed best to consider the resources and work of the empire in Germany, its influence on law, on administration, on constitutional and financial growth; and in order to exhibit its work in proper proportions, and to throw additional light upon the causes of its downfall, chapters are added upon the German nobility, upon the expansion of Germany, and upon the German Church. Passing from Germany to Italy, it seemed necessary to consider the history of the imperial legislation in Italy and in the kingdom of Sicily, to discuss the relations of the emperors with the city of Rome, to estimate the amount of administrative work which was done by the emperors south of the Alps, and to weigh the reciprocal influence of German and Italian culture during a period of such close political union between the two countries.

I do not profess to write complete treatises upon any one of these subjects, or to introduce new facts into the august presence of the learned. I am far from having exhausted the literature of the period, although I hope that there is nothing of real importance, for my purpose, either in the first-hand or second-hand authorities, which has escaped me. The object of this essay has been to arrive at a judgment as to the practical working and value of a great idea, and not to elaborate detail. Thus my obligations to secondary authorities are very considerable. As they are insufficiently acknowledged in the notes, let me here state that in the main my knowledge of German law comes from Schröder and Stobbe and Homeyer and Sohm and Schulze; that the chapter on Italian administration is almost wholly derived from Ficker's

Forschungen; while the chapter on the city of Rome is largely based upon Gregorovius. Riezler has been my main guide to Bavaria, Stälin to Swabia, Stein and Gengler to Franconia, though I have consulted original authorities as well. Huber has helped me much over Austria, Lavisse and Michael over the colonization of the East, Sugenheim and Specht and Hauck over the Church, Brandileone over the legislation of Frederick II., Gaspary over the beginnings of Italian literature, Richter and Giesebrecht and the *Jahrbücher* throughout. I cannot close without saying that many of the questions, which I have asked myself, would not have occurred to me had Professor Maitland never written upon the history of English law. To the many brilliant and learned works, which have come from his pen, I owe numerous suggestions, which will be readily detected by scholars.

Finally, my best thanks are due to Mr. Nowell C. Smith of New College, who has not only borne the burden of looking over these sheets, but has made many suggestions upon points of style, which I have only been too glad to follow.

PART I.

CHAPTER I.

THE SURVIVAL OF THE IMPERIAL IDEA.

THERE is no lesson which mankind has been so slow to learn as the necessity of continuous political and social change.[1] Each succeeding form of social and of political structure has seemed final to the men who lived under it. The greatest thinkers of antiquity, Plato and Aristotle, while recognizing the fragility of existing politics, concur in their belief that fate holds no surprises garnered in her hand. Society goes through a necessary cycle of changes. Progress is followed by degeneration, degeneration by progress, and almost all the political inventions have been already made. The mysteries of Nature may indeed, according to Plato, bring to birth a generation of men in whose hands the State will reach ideal perfection; but the ideal can be forecast by the philosopher; no long and painful prologue of evolution necessarily stands between it and the present world; and it is conceived of rather as a fixed though brittle state, than as a moving and

[1] For this chapter I am largely indebted to Döllinger's famous article on the "Empire of Charles the Great," first printed in the *Münchener Historisches Jahrbuch*, 1865, and since translated into English by Margaret Warre: *Essays on Historical and Literary Subjects*, 1894.

continuous process. Even the amazing revolution of things, which is summed up in the downfall of Greek City States and the foundation of the Roman Empire, did not affect this deeply-rooted tendency of the human mind. The destinies of man were now conceived to be bound up with the fortunes of a new polity, but the polity was to be as durable as man himself, and though bricks and stones might crumble and perish, yet the city and the Empire of Rome were the imperishable guardians of human peace and safety.[1] Was there not an ancient auspice that Mars, Terminus, and Juventas had refused to give place to Jove himself? The boundaries of the empire would never recede. Rome, founded on an eternal pact between Virtue and Fortune, would be young and warlike to the end of the world.[2]

To the believing Christian too, the riddle of history presented no difficulties. The origin, the intention, and the end alike of the general and of the individual life were known to him. "We," wrote Lactantius, "who are instructed in the science of truth by the Holy Scriptures know the beginning of the world and its end."[3] To expose the contradictions of the ancient philosopher and the crudities of the ancient creeds, to confront the perplexities of science with the certainties of faith, were the main tasks of the early Christian apologists, and nowhere was Christianity more powerful to mould and transmute current conceptions than in the domain of historical retrospect and prophecy.

It had not escaped the notice of the early Christians that the rise of Christianity synchronized with the foundation of the Roman Empire. While the empire

[1] Tac., *Hist.* i. 89.

[2] St. Augustine, *De Civ. Dei*, iv. 29; Ammianus Marcellinus, xiv. 6, 3; xix. 10, 4.

[3] Lactantius, *De Div. Inst.*, p. 628.

was spreading peace and order over the civilized world, Christianity was attempting to found a kingdom in the soul of man. There was indeed a strict parallelism between the political and the religious manifestations of the divine purpose throughout history. As Abraham had divulged the will of God at the beginning of the Assyrian Empire, as the fountains of Hebrew prophecy had been outpoured during the lifetime of Romulus and his immediate successors, so Christ had come to reveal the final purpose of God at the birth of the Augustan age.[1] Three great empires had passed away; the work of Ninus and Cyrus and Alexander was utterly dissolved, but the Roman Empire was founded to be the strong and beneficent agent through which the teaching of Christ was to be stamped upon the world.[2] The Roman Emperor was indeed unworthy of the divine honours which his subjects lavished upon him, but he was chosen by God, he was second to God, and he deserved the loyalty and obedience of the Christian sectaries. The city of Rome was not indeed to be eternal as the Roman poets had prophesied, for mankind were not to occupy the world for ever. But the city would at any rate last till the coming of Antichrist, and the emperors were deserving of the prayers of the Christians since it was only by the Roman Empire that that awful event could be retarded.[3] The Sybilline prophecies, which were

[1] Augustine, *De Civ. Dei*, xviii. 27.

[2] Augustine, *De Civ. Dei*, iv. 6, 7; v. 13. "Quam ob rem cum diu fuissent regna Orientis inlustria voluit Deus et occidentale fieri, quod tempore esset posterius, sed imperii latitudine et magnitudine inlustrius, idque talibus potissimum concessit hominibus ad domanda gravia multa multarum gentium"; and xviii. 22, "Condita est civitas Roma velut altera Babylon et velut prioris filia Babylonis per quam Deo placuit orbem debellare terrarum et in unam societatem reipublicae legumque perductum longe lateque pacare."

[3] Tertullian, *Apologeticus adversus gentes*, cc. 30, 31, 32, 33, 36. Jerome, *Ep.* cxxi.

accepted as sacred by the early fathers, and which were throughout the Middle Ages believed to exist in the Lateran, confirmed the belief in the divine purpose of the empire.[1] It was observed too that the three languages in which, after the labours of St. Jerome, the Scriptures were written, were all languages of the Roman Empire, that the birth of Christ had synchronized with an unexampled period of universal peace; and it is one of the most remarkable facts in literary history that Virgil, the poet of the young empire, should have so caught the mystic feeling of the far-off medieval Church as to be mistaken for the prophet of the new creed.[2] The correspondence too between ecclesiastical and civil institutions, between the Mosaic and civil law, was soon noted, and it was a natural inference that since the institutions of the Church had been closely modelled upon those of the empire, the empire had been pre-ordained to be the receptacle and, so to speak, the outer shell of Christian belief. The ablest ecclesiastical writer of the ninth century, Walafrid Strabo, sums up his work upon Christian institutions by a detailed comparison of the civil and ecclesiastical hierarchy as it existed in his day. "As the Emperors of the Romans," he wrote, "are reported to have governed the world, so the Pope of the Roman see, as vicar of St. Peter, is raised above the whole Church." The patricians, as being next in dignity

[1] Huillard-Bréholles, *Chronicon Placentinum*, pref. p. xxxvi; cf. the curious "Ludus Paschalis de adventu et interitu Antichristi" [Migne, *Patr. Lat.* 213, f. 949], in which after the whole Church is subdued to the Roman Empire, the Emperor conquers the King of Babylon at Jerusalem, then places his crown upon the altar singing:

"Suscipe quod offero, nam corde benigno
Tibi regi regum Imperium resigno."

After which Antichrist appears.

[2] Melito, *ap. Eus. H.E.*, iv. 26; Hilary, *Instructio Psalmorum*, c. 15.

to the emperor, correspond to the patriarchs; the archbishops who are above metropolitan rank, to the kings; the metropolitans to the dukes, the bishops to the counts, and so on down to the lowest rank in either hierarchy.[1]

Indeed the idea of the perpetuity, unity, and sanctity of the Roman Empire was too strongly rooted in the Christian and pagan breast to perish in the rude blasts of the barbaric invasions. All the memories of the past, all the hopes for the future, were bound up in this great polity, which still appeared to be the only possible bulwark of social order. In the poem of Rutilius Namatianus, written just after Alaric's sack of Rome, we have a touching and eloquent appeal to the eternal city from a Gaul who felt the full splendour of her traditions. "Never," he writes, "have the stars in their everlasting motions beheld a fairer empire. What had the Assyrians, what had the Medes, the Parthian or the Macedonian tyrants to compare with it? It was not that thou hadst more spirit or more force, but that thou hadst more counsel and judgment. Continue to give laws which will last into Roman centuries. Alone thou needst not fear the fatal distaff."

This was the cry of a Romanized pagan; but the barbarians too felt the magic of the Roman name, and even in the midst of their ravages respected the majesty of empire. Theodoric, who practically conquered Italy for the Goths, received the patrician dignity from Zeno, and held Italy in virtue of an Imperial pragmatic. The letters of his secretary Cassiodorius show us that he preserved the imperial machinery of government, and anxiously consulted for

[1] *Walafridi Strabonis Liber de exordiis et incrementis*, ed. Knöpfler, pp. 98-102.

the maintenance of Roman "civility," as well as for the preservation of the architectural splendours of Rome. Theodoric knew Byzantium too well to dream of subverting the imperial system or even of supplementing or correcting the Roman law, and when the Gothic ambassadors of Witiges were making their apology before Belisarius, the general of Justinian, they laid stress upon the fact that the Goths had never attempted to legislate, but had always accepted the imperial code. The Franks were more powerful and savage than the Goths; they were further removed from the seat of the empire, and were settled in a country in which the material evidences of Roman power were less strikingly displayed; but their conquest was prepared by a long process of Germanic infiltration, and when the final crash came it was due to the smart impact of a small warrior band capable of destroying the tottering superstructure of the political fabric, but incapable of creating institutions or materially disturbing the habits of urban life. So Clovis received titles from Byzantium, the Frankish chancery preserved Roman forms, and the Frankish administration readily adapted itself to Roman traditions.[1] To the mind of the Byzantine official the Franks were a people who might indeed be formidable, but who held a defined and privileged position under the Roman Empire. They were allowed to coin gold, and they possessed the peculiarly Roman privilege of assisting at the games of Troy.[2]

[1] For the whole question of the Frankish conquest of Gaul, cf. Fustel de Coulanges. For the influence of the Byzantine chancery among the nations of the West, cf. Sickel, *Acta Regum et Imperatorum Karolinorum*, pp. 72-4.

[2] Procopius, *Bell. Goth.*, iii. 33; Agathias, i. 2, Εἰσὶ γὰρ οἱ Φράγγοι οὐ νομάδες, ὥσπερ ἀμέλει ἔνιοι τῶν βαρβάρων, ἀλλὰ καὶ πολιτείᾳ ὡς τὰ πολλὰ χρῶνται Ῥωμαϊκῇ, καὶ νόμοις τοῖς αὐτοῖς καὶ τὰ ἄλλα ὁμοίως ἀμφί τε τὰ συμβόλαια καὶ γάμους καὶ τὴν τοῦ θείου θεραπείαν νομίζουσιν.

But that they had broken away from Constantinople would have been admitted neither by themselves nor by any one else.

Some people felt that the Barbaric invasion was a tragedy unexampled in history. The poet-barrister Agathias of Constantinople was persuaded by his friends to abandon his verses and his briefs that he might chronicle the cataclysm, which was overwhelming the empire of Justinian, and his call to serious historical writing is recorded in one of the most touching and impressive passages of autobiography.[1] But the importance of this epoch-making event was intentionally obscured in the West, and the whole influence of the Latin Church was exerted to preach a misleading view of historical continuity. In his commentary on the book of Daniel, Jerome, following St. Hippolytus, had interpreted the four empires of the king's dream to be respectively those of the Babylonians, the Medes, the Macedonians, and the Romans. It followed from this that the Roman Empire, being the last of the four, would endure till the end of the world, and although Orosius and Augustine differed in their attribution of the second and the third empires, all historians were agreed that the Roman Empire ushered in the final age of mankind. No superstition has ever been so fatal to true historical perspective. It prevented every writer in the Middle Ages from forming a just estimate of the barbaric invasion. The four monarchies pursue and pervert historians into the enlightened days of Charles V.[2]

[1] Agathias, *Praefatio* [*Corpus Scriptorum Historiae Byzantinae*].

[2] Sleidan was a victim. Wegele, p. 211; Bernheim, *Lehrbuch der Historischen Methode*, pp. 56-62.

The unimportance of the Western emperors after Theodosius, the illegitimacy of their elections, and the superior brilliance and prestige of the unvanquished Constantinople over the oft-conquered Rome, contributed to maintain the idea of the unity of the empire, and it is a striking fact that the fall of the Western Empire in 476 is only observed by one contemporary, Marcellinus, and that his remark is not repeated until the days of Paul the Deacon and Theophanes, when the West had become thoroughly Christianized, and was feeling the mighty hand of the Frank.[1] The re-conquest of Italy by Justinian in the sixth century led to the destruction of an interesting attempt to found an united Italian kingdom out of the Gothic and Latin races, and paved the way for the states of the Church and for the long political paralysis of Italy. But the sixteen years of Justinian's rule in Italy gave back to the Western world the Roman law, the memory of which would otherwise have perished; the Roman law became the law of the Church; upon it was based the Visigothic code, and each of the nations of the West, as it rose in the scale of civilization, came in an increasing measure to apprehend its value.[2]

But of all the forces which perpetuated and moulded the idea of the empire the most powerful was that of the Church. Not only had the early apologists of Christianity bequeathed to posterity definite views as to the divine mission of Rome, but events were forcing the head of the Christian Church into the position of the Western representative of the imperial system. Few pages of history are more instructive than those

[1] Döllinger, *The Empire of Charles the Great.*

[2] F. W. Maitland, "A Prologue to the History of English Law," *Law Quarterly Review*, xiv., No. 53. Jan. 1898.

which portray the lives of the Popes from the beginning of the fifth to the beginning of the ninth century. We watch the gradual weakening of the imperial hold over the West, and the gathering strength of the Papacy among the barbarian peoples. We trace the growth of a continuous papal policy which is felt and acted on even by the feebler members of that long series. As we read the *Liber Pontificalis* we seem to hear the unremitting ring of hammer and mallet which was converting pagan into Christian Rome. If a Pope could not govern, he could at least leave his mark in stone or marble upon the city which contained the graves of St. Peter and St. Paul. By degrees he came to be considered the chief officer and protector of the western capital, and when the Lombard invasions snapped the connection between Rome and Ravenna, it was he who made himself responsible for the defence of Rome, and for the conduct of imperial policy in that part of Italy.

In the letters of Gregory the Great, and in the *Liber Diurnus*, we have a picture of the policy of the Bishop of Rome during the domination of these Arian invaders. The Pope sends to Constantinople for troops and money, he ransoms captives, makes truces and treaties with the enemy, and corresponds with a Lombard princess who has been converted to the Roman faith. When a bishop, whose diocese happens to lie in the Lombard territory, is ordained in Rome, he must swear that, so far as he may, he will preserve peace between the Republic and the race of Lombards;[1] and a Pope at the end of the seventh century prays that the emperor with the most brave and faithful armies of the Roman Republic may sub-

[1] *Liber Diurnus*, ed. Sickel, lxxxvi.

due the rebels.[1] Indeed, nothing is more remarkable than the continued loyalty of the Pope to the eastern empire during the seventh and the eighth centuries. The Greek was odious in Italy, and his language, as the language of heresy, was carefully ignored by the Roman Church.[2] The second exarch Narses had become a bye-word for avarice and extortion, and when a Greek emperor appeared in Italy, it was only like Justinian II. to slaughter the clergy of Ravenna, or like Constans II. to pillage the temples and churches of Rome. Yet the prayers of the faithful were invited for the lives and safety and victory of the Church's most tranquil and Christian lords, that by their regal virtues God might grant manifold victories, cause the Christian republic to subdue all races to itself, and rejoice the heart by the full restoration of the ancient sway of the Roman Empire.[3]

The main reasons for this tenacious loyalty lay in the fact of the Lombard conquest. If the Greek was odious, the Lombard was two-fold more so. He was a heretic, he was a barbarian, and he even usurped an imperial title. If the exarchate was supported by the Papacy, it was because it represented imperial authority and orthodox civilization against unorthodox and heretical barbarism. But when once the exarchate was conquered, the task of upholding the empire in the West necessarily devolved upon the Pope alone.[4] There was a moment when it seemed in Italy that

[1] *Liber Diurnus*, lxxxv. It is possible that this formula may belong to the time of Hadrian I.

[2] Gregory I., though several years Responsalis at Constantinople, always avowed his ignorance of Greek, and was indignant at a Greek version of his sermons being circulated in the Balkan peninsula. Greg., *Ep.*, i. 28, vii. 29, x. 21, xi. 35.

[3] *Liber Diurnus*, lx.

[4] *Les Premiers Temps de l'État Pontifical*, L. Duchesne.

the functions of empire and Papacy would be combined in the person of the Bishop of Rome, and the idea was characteristically expressed in the famous forgery of the Donation of Constantine.

This document was composed somewhere between the years 754 and 774; that is to say, in the interval between the fall of the Greek Government at Ravenna and the first intervention of Charles the Great in Italy. There can be little question now but that it emanated from the Roman clergy, whose aspirations it embodied. The Emperor Constantine, on leaving Rome for Byzantium, was asserted to have raised the Roman clergy to senatorial dignity, to have given them the privilege of riding on white horses, and of wearing the insignia of patrician rank. To the bishop who presided over this freshly ennobled order of ecclesiastics he surrendered the government of Italy, or the western regions of the empire.[1] Thus a legal justification was provided for the large secular powers which had been, as a matter of fact, exercised by the Popes during the Lombard period, and for any extension of those powers, which the circumstances of the time might demand. To the orthodox Roman mind at this particular epoch, when the Court of Byzantium was no less heretical than the Court of Pavia, it might seem as if the only hope for Christianity lay in the extension of the papal dominion in the west. The fusion of the empire and Papacy, if not in name, yet in fact, was an idea which may have floated for a while before the Italian mind. That it was never translated into fact was due to the physical impotence

[1] *Omnes Italiae seu occidentalium regionum provincias loca et civitates.* Mirbt, *Quellen zur Geschichte des Papsttums*, pp. 37-9; Duchesne, *Les Premiers Temps*, p. 90; Friedrich, *Die Constantinische Schenkung.*

of the Papacy to cope with the Lombards. But it was of inestimable importance to the future, that even that transient idea received a fixed shape in the forged Donation. For embodied as it was in the false decretals of the ninth century, it kept alive the conception of the imperial functions of the Papacy in days when the actual Popes were but shadows of a name, and their office the cat's-paw of mean and violent factions. It gave, as it were, a final seal to those ecclesiastical conceptions of the empire which had been growing ever since the Church became conscious of herself.

But the influence of this forgery was not generally felt till the middle of the ninth century, when it found its way into the false decretals. At the juncture at which it was concocted, the future of Latin Christianity depended not upon the Pope, but, as the prophetic soul of Avitus of Vienne more than two centuries before had plainly declared, upon the Frankish king.[1]

It is impossible here to trace the course of papal diplomacy from the first letter of Stephen to Charles Martel in 752 to the imperial coronation of Charles the Great by Leo III., on Christmas Day, 800. But there can be little doubt that Charles, in accepting the imperial crown, had no intention of impairing the unity of the empire. Charles, indeed, was a Frank, and proud of his Frankish origin, but he was deeply penetrated by ecclesiastical and classical traditions. He rejoiced in settling ecclesiastical questions, and he collected round his court the most famous theologians and classics of his age. To his own intimate circle of scholar friends he was known as King David, a title

[1] For the striking letter of Avitus to Clovis, *Aviti Opera* ; *Epist. ad Diversos* ; M.G.H., *Auct. Ant.*, vi. 2, p. 75.

which aptly expresses the ideal of a man who found equal satisfaction in sacred music and in the slaughter of the Philistines. It is not necessary to suppose that his respect for the Church would have made him the tool of the Papacy, or even that he would have deviated from his natural course to suit papal ambitions. The Church in Gaul was at this time thoroughly independent of Italy, and though it is true that the Dionysian collection of canons was received north of the Alps, yet Roman decrees and Roman synods were more infrequent and less influential, and theoretically not more authoritative than the decrees of provincial or of national synods, held at the behest of the king of the Franks.[1] Charles then went on his own way, and his own way was the way of all his barbaric predecessors—of Odoacer, of Theodoric, of Ataulph, and of Clovis. As early as 782 he was negotiating with the Empress Irene for a marriage alliance between the two courts, and as late as 798 he is still in communication with Byzantium.[2] When the imperial crown was placed upon his head, owing to pressure of the Roman populace, he felt surprised and annoyed at the precipitancy which had anticipated his aims, and involved him in a dubious relation to the eastern court. At any rate, in 802 there is an exchange of embassy between Aix and Constantinople, and although the Frankish historians are silent upon the point, we are informed by Theophanes that the

[1] Giesebrecht, "Die Gesetzgebung der Romischen Kirche zur Zeit Gregor VII." (*Münchener Hist. Jahrb.* 1866).

[2] Charles receives an embassy from Irene, probably to inform him of the murder of her son, Constantine [15th July, 797], whom he had hoped, in 782, to marry to his daughter Hrothrud. "Haec tamen legatio tantum de pace fuit," say the *Annals of Lorsch.* For the negotiations of 782, cf. Theophanes, *Chron.*, ed. Classen, i. 705; *Ann. Mosell.* 781 [SS. xvi., p. 497].

ambassadors of Charles and of the Pope petitioned for the hand of the Empress Irene herself, in order that the East and the West might be united under a single sceptre. When these negotiations failed, the *coup d'état* of the Pope was covered with the decent cloak of a legal fiction. The *Annals of Lorsch*, which represent the official view of the Frankish Court, declare that the eastern empire became vacant on the death of Constantine, since Irene, being a woman, was unable to succeed; that, accordingly, it seemed good to the Pope and the fathers of his council, and the rest of the Christian people, that Charles should be elected emperor. God had put Rome, the ancient capital of the Cæsars, Italy, and Gaul into his hands, and the whole of the Christian people had petitioned him to take the imperial title. It was thus that the emperor's adherents justified his action. The whole course of Charles' subsequent life shows him to have been keenly desirous to maintain the unity, and to live up to the idea of the Roman Empire. Just as Constantine transferred his capital to New Rome, so Charles appeared to his contemporaries to be building a new Rome at Aix. In the imperial palace, which was connected with the cathedral by a portico, two rows of frescoes symbolized the continuity of the empire and the aims of the emperor. On the one side were pictures of Ninus and Cyrus and Phalaris, the favourite representatives of pre-Roman tyranny; of Romulus and Remus founding Rome, of the blind and unfortunate Hannibal, of the conquests of Alexander, of the expansion of the Roman Empire. On the other side were depicted the exploits of Constantine and Theodosius, who, throughout the Middle Ages, were held up to the imitation of Christian

kings, and signal passages from the lives of the Frankish sovereigns, such as Charles Martel conquering the Frisians, Pippin giving law to Aquitaine, and Charles the Great battling with the Slaves. In the title which the Frankish king assumed in 800, and which appears in all the imperial documents subsequent to that date, we have a compendious statement of the various aspects which were united in his office. He is "the most serene Augustus," the bearer of the Roman imperial title. He is "crowned by God." He is "the great pacific emperor governing the Roman Empire."[1] His mission is that of the first Augustus, to spread peace and civilization through the world, and his work is specially connected with the city of Rome. Lastly, he is, "through the mercy of God, king of the Franks and Lombards." In a letter to Leo III., written in 796, Charles lays down his conception of the proper relations between the king and the Pope. "It is our duty," he writes, "with the aid of divine religion, to protect with our arms the holy Church of Christ from the incursions of pagans and the devastations of the infidel without, and within to support the Catholic faith. It is your duty, most holy father, to raise your hands to God with Moses, and to help on our campaign."[2] The idea was reflected in the contemporary Mosaics of the Lateran, which depict Christ giving the keys to St. Peter and the standard to Constantine, while on the other side of the main group St. Peter reaches the pallium to Leo III. and the standard to Charles. The Pope and the Frank were the joint and equal rulers of Rome.[3]

[1] Sickel, *Acta Regum et Imperatorum Karolinorum*, p. 263.

[2] *Monumenta Carolina*, p. 356. Alcuin was less modest, and ranked the Frankish king above the Pope and the Emperor of the East, Bouquet, v., pp. 612, 13.

[3] *Liber Pontificalis*, ed. Duchesne, ii., p. 35.

The influence which Charles exercised over medieval conceptions of kingly duty cannot be too strongly stated. He became for all time the type of secular force placed at the service of religion. The circumstances which provoked his various visits to Italy, and especially the story of Pope Leo, blinded and mutilated by a Roman faction, fleeing to the emperor for help and afterwards crowning him in St. Peter's, deepened the impression of the ancillary relation of empire to Papacy. In the *Kaiserkronik*, which was written by a clerk of Regensburg between 1147 and 1152, the story says that Leo was the brother of Charles. One night as Charles was sleeping, the Pope appeared before him and bade him go to Rome. In obedience to the mysterious summons Charles asked leave of his father Pippin to go to pray at the Capitol. The leave was granted. Charles was received kindly by his brother and invited to become the advocate of the Roman see. But after he has returned home, the Romans rise in insurrection against the Pope and put out his eyes. Leo then travels disguised as a pilgrim to the court of Ingelheim. He reveals his condition to his brother, who, as advocate of the papal see, exclaims that he is bound to protect Christendom with the sword. A crusade was proclaimed, and "never did so great an expedition wind over the St. Bernard Pass or the Triental from Kerlingen to Rome." For three days and nights Charles encamped on the Monte Mario overlooking the Tiber, engaged in prayer. Then early in the morning of the fourth day the voice of God addressed him, and told him to go into the city. For seven days and nights he remained in the palace of the Lateran, and then solemnly tried the insurgents. In response to the prayers of the Frankish king, the Pope received back

his sight, and through the special and frequent inspiration of an angel and an apostle Charles proceeded to confirm the Donation of Constantine, and exacted from each of the lords of the land an oath, that he would never further that which was wrong. Then, as the empire was vacant, owing to the death of Irene and her son, Charles received the golden crown of Constantine. His character is summed up in the following words: "Charles was a true vicar of God. He won the heathen to Christianity."[1]

No one in fact has sooner received popular canonization than the great Frank. Before the end of the ninth century a thick cloud of legend has gathered round his name.[2] In 968 an Italian monk, Benedict of Soracte, invented for him an imaginary voyage to Alexandria and Constantinople, the indispensable compliment of a saintly life.[3] The *Chronicle of Turpin*, which was composed between 1100 and 1150 to attest the authenticity of the relics of St. James and Compostella, gave a wide circulation to this fictitious pilgrimage, and when Godfrey of Viterbo wrote his pantheon for Henry VI., two mountains in Sicily went under the names of Roland and Oliver, the two companions of Charles who had accompanied him to that island on his return from the Holy Land.[4] Although in Germany the Caroline legend was less generally diffused than was the case in Italy and France, yet the Church would not willingly

[1] *Kaiserkronik*, l. 15073, ed. Massmann:

"Karl war ein warer gotes wîgant
Die haiden er ze der cristenhaite getwanc."

[2] Monachi Sangallensis, *De Gestis Karoli Imperatoris, libri duo*, SS. ii. 731. For the whole subject of the Caroline Legend see *Histoire Poétique de Charlemagne*, by Gaston Paris.

[3] SS. iii. 710, A twelfth century window in the cathedral of St. Denis depicts the reception of the emperor at Constantinople.

[4] God. Viterb., *Speculum* [SS. xxii. 222, 3].

allow the memory of so notable a champion to die. The German chroniclers, who for the most part represent the monastic tradition, can bestow no higher compliment upon an emperor than that he was a worthy successor of Charles. "After Charles the Great," said Thietmar, of Otto the First, "no such ruler or defender of his country has occupied the royal chair."[1] His grandson, Otto the Third, clearly formed his policy upon the same model. He attempted to restore the empire to its dimensions under Charles, and next to Rome he preferred Aix to all other cities in his dominions.[2] So great indeed was his veneration for the first Frankish emperor that he excavated his tomb in the cathedral of Aix. The legend went that Charles was found sitting fresh and upright upon his throne, clad in his imperial robes, with the crown on his head and his sword at his side, and the gospels on his knees, as if in the flesh as well as in the spirit he were still ruling the lives of men.[3]

The devotion of the German emperors and of the Christian Church to the shade of Charles the Great culminated in his canonization by Pascal III. at the instance of Frederick Barbarossa in 1164. A life of the "Apostle and Confessor," as he was termed by Frederick, was composed at the emperor's desire, and founded upon the fictions of the *Chronicle of Turpin*. In the lessons and in the hymns, which form

[1] Cf. also *Chron. Laur.* [SS. xxi., p. 388], "Qui nulli post Karolum magnum secundus victricibus semper armis regni sui terminos dilataverit." Cf. Wipo on Election of Conrad II. c. 3, "Si Carolus magnus cum sceptro vivus adesset non alacrior populus fuisset"; and again, "Conradus Caroli tenet ascensoria regis."

[2] "Aquisgrani quam etiam cunctis hinc post Romam urbibus praeferre moliebatur," *Ann. Qued.* 1000.

[3] Cf. SS. iii. 91, 92, 781; vii. 106; Ranke, *W.G.*, vii. 79; Gies., *K.Z.*, i. 734, 864; Gaston Paris, pp. 60, 61. Otto III. cut the nails of the emperor, "et omnia deficientia circa cum reparabat."

part of the office of St. Charlemagne, and which were read and sung in church all through the Middle Ages, and in Navarre as late as the seventeenth century, we have a living witness to the place which this great warrior continued to hold in the medieval mind.[1]

It is impossible to suppose that at the death of Charles the Great there was any definite body of opinion either as to the precise character or as to the precise obligations of the imperial office. The Frankish chancery was proverbially conservative, and the words "regnum" and "imperium" were used interchangeably both before and after the coronation of 800.[2] According to the view of Charles, the empire might be bequeathed in the same way as the kingdom, though it could not, like the kingdom, be divided. Charles would never have countenanced the idea that the empire was the gift of the Roman plebiscite, still less that it was the gift of the papal chair. Both Charles, in 813, and Lewis, in 817, dispose of the imperial crown, and it is worthy of note that not only Lewis, but even the papal chancery reckon the beginning of the new reign from the death of Charles on January 28, 814, and not from the coronation by Stephen IV. at Reims, in October, 816.[3] So again Lothair dates his assumption of imperial power not from his coronation by the Pope, but from his arrival in Italy, a clear proof that

[1] Migne, ii. 1368; Gaston Paris, p. 64. As Charles was canonized by an anti-pope there was some doubt as to the legitimacy of the proceeding. The court of Rome has never struck the emperor's name from the calendar, though the office has been suppressed in the present century.

[2] Sickel, *Acta Regum et Imperatorum Karolinorum*, pp. 182-4; Döllinger, *Münch. Hist. Jahr.* i. 344. The Monk of St. Gall apologizes for the application of the term "Rex" to Charles, on the ground that it was an ancient Roman title—"quod nomen imperii veteribus in usu fuit" (*Ann. St. Gall*, c. v.). So Regino, Nithard, Flodoard, and Walafrid often address Lewis as king.

[3] Richter, *Annalen der deutschen Reichs*, *ad. ann.* 814.

up to this point, at any rate, the Papacy was not regarded as the source of imperial power.[1] At the same time, the emperor, as head of Christianity, was felt to be specially connected with the Pope, and the Pope made every effort to insist upon that connection. In 816 Stephen IV. travelled to Reims, carrying with him the golden crown of Constantine. The alleged motive of his visit was the confirmation of the peace and of the unity of the Church. But his real objects were more specific. In the first place, he wished to obtain the new ruler's confirmation of the gifts which had been previously made to the Church by Pippin and by Charles; and, in the second place, he wished to place the imperial crown upon Lewis' head, and thereby to connect once more the dignity of the empire with its special obligations to the Roman see. The biographer of Lewis, Ermoldus Nigellus, expresses the sentiment of the occasion in the following lines, which he puts into the mouth of his hero:

> "Tu sacer antistes, ego rex sum christicolarum
> Servemus populum dogmate, lege, fide.
> Ut mea progenies Petri servavit honorem,
> Sic ego servabo praesul amore dei." [2]

The example of Pascal was consistently followed by his successors, and by the time of Otto the First it had become the established practice of the Popes to confer the imperial crown, and to exact of the recipient confirmations of the special privileges of the Roman see.[3]

[1] Mühlbacher, *Regesta Imperii*, 737, 745, 762, and Waitz, *D.V.G.*, iii. 261, 263.

[2] *Carmina Primi Aevi*, ed. Dümmler, vol. ii., p. 35.

[3] Mühlbacher, 622, exc. 1. Jaffe, *Regesta*, 2774, 2921, 3061, 3051; and for the alleged privileges of Charles the Bald [*F.D.G.*, vol. xiv., p. 411, and vol. xx., pp. 127-164]. For the early donations to the papacy, Duchesne, *Les Premiers Temps de l'État Pontifical*; Ficker, *Forschungen zur Rechts und Reichsgeschichte Italiens.*

But although papal confirmation was undoubtedly valued, as giving additional validity to the designation of the last emperor and to the consent of the Frankish notables,[1] it cannot be said that at any time in the ninth century the Papacy was regarded as the exclusive source of imperial power. No clearer instance can be given of the confusion of claims and ideas on this point than the story of the election of Charles the Bald in 875. A year before his death, Lewis the Second, the most capable and vigorous of the later Carolingians, met Pope John the Eighth and Lewis the German at a conference at Verona. It may be presumed that the succession to the empire was the subject of their deliberations, and it may be guessed that no conclusion satisfactory to all parties was arrived at. At any rate, on the death of Lewis the emperor, his name-sake the German sent his son Carloman into Italy as the successor specially designated by the deceased monarch.[2] But it appears, according to one authority,[3] that the widowed empress Engelberga had likewise been designated, so that there were two competitors for the imperial office, basing their respective claims upon the will of the last emperor, not upon the will of the Pope. John the Eighth, however, was playing his own game. He represented that the great Nicholas had once upon a time, by divine inspiration, recognized Charles as the heir to the empire.[4] It is, at any rate, certain that the successor of Nicholas, Hadrian the Second, had in 872 secretly promised the empire to the Neustrian.

[1] Agobard, *De Comparatione Utriusque Regiminis*, c. 4: "Quod vestra voluntate et potestate cum consensu totius imperii vestri factum est et postea in apostolica sede roboratum."

[2] Carloman, in a document dated 16th October, 877, [Mühlbacher, 1481], speaks of "Ludovici qui nobis regnum istud disposuerit."

[3] SS. iii. 722.

[4] Jaffe, *Reg.* 3039.

John therefore invited Charles into Italy, and Charles was crowned at Rome, but so little authority was attaching to the mere act of papal coronation, that Charles had the election twice solemnly confirmed, once by Italian bishops and others at Pavia,[1] and again by the Cisalpines at Pontigny; and so little was the new honour appreciated north of the Alps, that the emperor was accused of having abandoned the good old Frankish customs for the vain fashions of Greek imperialism.[2]

But the victory once achieved, the Papacy rapidly made good its position. "You are not," wrote John the Eighth to the Archbishop of Milan, Anspert, in 897, "to accept a king without our consent. For he who is to be ordained by us to the empire, must be by us first and foremost invited and elected."[3] On these principles, at the next vacancy the Pope disposes freely of the crown. He sounds Lewis, he sounds Boso of Provence, he finally offers the vacant dignity to Charles the Fat; and it is expected of the emperor designate and of the crowned king of Italy that, before entering the Roman territory, he will confirm all those privileges of the see of St. Peter's, the maintenance of which represented in papal eyes one of the chief functions of the emperor.[4] From the coronation of Charles the Fat in 881 to the coronation of Otto in 936, the Pope becomes in fact the disposer of the imperial crown. At the beginning of

[1] Boretius, *Capitula Regum Francorum Orientalium*, p. 348, "Tam quia divina pietas vos beatorum principum Apostolorum Petri ac Pauli interventione per vicarium ipsorum ... ad profectum Sanctae Dei ecclesiae nostrorumque omnium incitaverit et ad imperiale culmen Sancti Spiritus judicio provexit."

[2] *Ann. Fuld.* 876; SS. i. 389, "Omnem enim consuetudinem Regum Francorum contempnens, Graecas glorias optimas arbitrabatur et ablato regis nomine se Imperatorem et Augustum omnium regum cis mare consistentium appellare praecepit."

[3] Jaffe, *Reg.* 3224.

[4] *Ib.*, *Reg.* 3333.

the ninth century "imperium" and "regnum" might easily have been confounded. The imperial office might have been treated like a slice of territory, and transmitted from father to son. If that had been the case, its symbolic value would rapidly have been dissolved, and the idea of its special connection with Rome and the Roman see would have perished. The rivalries which divided the Carolingian house, the industry of the Popes, and the exalted view of the papal power which, through the influence of the False Decretals, spread over Western Europe during the latter half of the ninth century, averted this consummation. By the end of the ninth century it was an established principle that whoever wished to become emperor of the West must go to Rome to get crowned by the Pope in the Church of St. Peter's.

In the divisions which ensued after the death of Charles the Great, it might well have been expected that all idea of the unity of the empire would have faded away. Not only was the empire partitioned and repartitioned, but it was partitioned after 842 upon lines which more or less corresponded with those of race and language.[1] Still, in spite of the blood which flowed at Fontanet, the idea of the unity of the Carolingian kingdom was never lost. That idea was always preserved by two powerful influences. In the first place, the Carolingian sovereigns belonged to the same family, and at recurrent and not infrequent intervals returned to a sense of their common kinship. Between 842, the date of the treaty of Verdun, and

[1] Longnon, *Atlas Historique de la France*, shows how the partitions mainly followed the lines of the ecclesiastical provinces. In other words, the terms were clearly drawn up under ecclesiastical influence, and the kingdoms of the various members of the Carolingian house were regarded merely as provinces of a *Regnum Francorum*.

877, the date of the reunion of the various portions of the empire under the sway of Charles the Bold, there are no less than thirteen cases of treaties, conferences, or pacts made between different branches of the Carolingian family.[1] At these meetings measures were concerted against the Danes, bishops *missi* and counts were sent to hold pleas and to punish offenders throughout the length and breadth of the empire, and provision was made for the needs of the Church. In these conventions the regnum or empire of Charles the Great was treated as a unity. At the meeting of Lewis, Charles, and Lothair, at Savonnieres, in 862, it is provided that the faithful *missi* then appointed shall correct all abuses in each of the kingdoms, and that every one, whosoever be his lord, shall have right and justice at his hands.[2] The care of the Roman Church even, which was the special obligation of the imperial office, was not only divided among the three sons of Lewis, in the arrangement made by him in 831,[3] but was redivided in 867 between Lewis and Charles at Metz.[4] That these barbarous descendants of Charles the Great either realized or valued the special connection between the city of Rome and the imperial title is far from probable. But they felt, in a dim way, from time to time, that to their family had it fallen to protect Christian civilization from the

[1] Faugeron, *De Fraternitate seu colloquis inter filios et nepotes Hludovici pii.*

[2] Boretius, *Capitula regum Francorum orientalium*, n. 243, p. 159.

[3] *Divisio Regni*, 831 [Boretius, p. 23, c. 11], "Jubemus ut ipsi tres fratres curam et defensionem ecclesiae S^cti. Petri simul suscipiant, sicut quondam a proavo nostro Karolo et avo nostro Pippino et beatae memoriae genitore nostro Karolo imperatore et a nobis postea suscepta est. . . . Similiter et de caeteris ecclesiis."

[4] Boretius, p. 167, "Mundeburdem autem et defensionem Sanctae Romanae ecclesiae pariter conservabimus in hoc, ut Romani pontifices nobis debitum honorem conservent sicut eorum antecessores nostris conservaverunt."

forces which threatened to destroy it both from within and from without. It is not that any distinctively imperial ideas prompt them to come together. They do not unite because the empire is necessarily one. That would have been a conception too Roman, too ecclesiastical, and too abstract; and besides, a political combination could only be effected by an acknowledgment that all the contracting parties were equal in rank.[1] The words "imperium" and "imperator" are, consequently, never mentioned in these diplomatic documents. But although formally the later Carolings were not acting to preserve the imperial idea, in substance they were helping to preserve it. The protection of the Roman Church, the maintenance of justice and order through Western Christendom, the repression of the barbarian and the heathen, these were the obligations of the Roman emperor, and these were the ends which they proposed to themselves to obtain.

It should be remembered, too, that in the midst of the political disintegration consequent upon the death of Charles the Great, one institution still retained its unity and its traditions. The Church was not indeed sufficiently strong during the ninth century to preserve its buildings or its farms from the Northman or the Saracen, or to impress any continuous or vigorous policy upon the feeble dynasty which held the empire in joint possession, but it was able during these dark and troubled times to maintain the idea of the unity of Latin Christendom, and to insist upon the essentially religious character of temporal sovereignty.[2] Indeed, in proportion as

[1] LL., sect. II., pt. i., p. 72.

[2] Notice the importance of unction in the *Coronatio Hirmintrudis reginae* 866 [LL. ii. 506], "Ut talem sobolem ei dominus . . . dignatur donare, unde sancta ecclesia solatium et regnum accessoriam defensionem posset habere."

the temporal power of the Carolings declined, the Church grew bolder in its enunciation of the necessary supremacy of spiritual over lay authority. As the strength of the Frankish kings decayed, they were taught to regard it as the gift of God, bestowed for the benefit of the holy Church, and the consolation of the faithful.[1] If a king were good, he ruled by the gift, if he were wicked, by the permission of his Creator.[2] A dictum of Pope Gelasius was frequently quoted, according to which the world was governed by two powers, the temporal and the spiritual; but the temporal sovereign could not usurp spiritual functions, for Christ alone could be both king and priest, and priests, in virtue of their spiritual power were superior to kings; first, because kings were consecrated by priests, whereas priests could not be consecrated by kings; and secondly, because priests are accountable to God for the actions of their temporal sovereign.[3] The example of Hosiah was invoked, to show that a prince might be struck with leprosy for usurping the priestly office, and the model of a kingly life was found in the biographies of Constantine and Theodosius, or in St. Augustine's picture of the "Happy Emperor."[4] It was pointed out that from the time when Constantine presided over the Council of Nicea, it had become customary for emperors to summon councils of the Church and to serve the cause of ecclesiastical discipline; and it was remembered

[1] The sentence of Cyprian, *De Abusionibus*, was frequently quoted, "Non est enim potestas nisi a Deo." Cf. Hincmar, *Ad Carolum III. imperatorem*, 52.

[2] Hincmar, *De Regis persona et regio ministerio ad Carolum Calvum Regem*, c. 1, "Quod bonos reges Deus facit, malos permittit."

[3] Hincmar, *Synod St. Macre.* [Migne, cxxv. col. 1069], and *De Ord. Pal.*, c. v., ed. Prou.

[4] Jonas of Orleans, *De Institutione Regia ad Pippinum Regem*, c. 17; *Aug. De Civ. Dei*, v. c. 24.

that the same emperor had told his bishops that, while they as clerks were exempt from the jurisdiction of laymen, he as emperor was liable to the jurisdiction of clerks.[1] Indeed the crown of kingship was the counsel of bishops,[2] and it was for the king to alleviate the hardships of the law by the equity of the canons passed in the councils of the Church.[3] The imperial armies, instead of being employed in fratricidal and intestine strife, should be hurled against the heathen with the view of enlarging the boundaries of the Christian faith, and it was the one prayer of the Church that the barbarians should be subjected to the most Christian emperor, not that the subjects of that emperor should be crushed and barbarized by taxation.[4]

In the Roman missal for Good Friday there is a prayer which is still used in the Austrian empire: "Oremus et pro Christianissimo Imperatore nostro N. ut Deus et Dominus noster subditas illi fiat omnes barbaras nationes ad nostram perpetuam pacem." It can be traced back to the missals of the eighth century,[5] and it is one of the notes which is most frequently struck by writers of the Carolingian Age. In a time when all culture was monopolized by the Church, it would have been surprising if the highest political office in the world had not been conceived

[1] Jonas of Orleans, *De Institutione Regia ad Pippinum Regem*, c. 2, c. 7 [Migne, cvi. 286-306].

[2] Sedulius Scotus, *Lib. de Rect. Christianis* [Migne, ciii. 291-331].

[3] Hincmar, *De Ordine Palatii*, c. 21.

[4] Agobard, *Liber pro filio Ludovici Pii* [Migne, civ. 312, 313], "Ecclesia orat ut Christianissimo Imperatori barbari subjicientur, non ut subjecti contribuentur et barbarisentur." Cf. also the letter of the bishops of Rheims and Rouen [Migne, cxxvi. 9-25].

[5] It is in the *Sacramentarium Gelasianum* [Muratori, *Vet. Lit. Rom.* I. 361 ; and H. A. Wilson, *The Gelasian Sacramentary*, p. 34].

as an instrument for the propagation of the gospel among the heathen.[1]

A letter of Lewis II., written to Basil of Constantinople in 871, expresses with great clearness the view which an emperor of the ninth century held of the origin and functions of his office. "You say," he writes, "that the imperial title is not either paternal or suitable to my race. The statement is ridiculous. How is the title unsuitable to my race when we know that Roman emperors (to cut a long list short) have been created from Spaniards, Isaurians, and Cazars? You cannot truly assert that these nations are more distinguished either in religion or in virtue. And yet you do not refuse to admit emperors from them. Further, as to what you say about our not ruling over the whole of Francia, accept, brother, a brief reply. We do rule over the whole of Francia, because we undoubtedly hold what those hold with whom we are one in flesh and blood, and one through the Lord of Life. Further, your beloved fraternity signifies to us that it is surprising that we are called emperor of the Romans and not of the Franks. But you must know that if we were not emperor of the Romans we could not be emperor of the Franks. For we have received this name and dignity from the Romans, among whom this sublime and exalted appellation first shone forth. We have undertaken to govern divinely the Roman race and city, and to defend and exalt the mother of all the Churches of God. It was from Rome that our race received its original authority first to obtain the monarchy and afterwards the empire. For the

[1] Hincmar, *De Regis persona*, c. 7, quoting *Aug. De Civ. Dei*, iv., c. 15, "Belligerare et perdomitis gentibus dilatare regnum malis videtur felicitas, bonis necessitas"; c. 8, The rules of war are to be taken from the Bible.

princes of the Franks were first called kings and then emperors; those, that is to say, who have been anointed emperors by the Roman pontiffs with the holy oil."[1]

The misfortunes of the later Carolingians could not obliterate the conviction that the empire was destined to last till the appearance of Antichrist. In a famous letter, written to Queen Gerberga, wife of Lewis the Simple, shortly before 945, Adzo, bishop of Luxueil, speculates upon the coming of Antichrist. He points out that the Greek and the Persian empires have each been great and glorious in their own time; but the Roman Empire had surpassed them all, and subdued all nations of the world to the position of tributaries. The apostle Paul had said that Antichrist would not come into the world unless there were first dissension. That meant that all the kingdoms of the earth must revolt from the Roman Empire. This time had not yet come, for although the Roman Empire was in a large manner destroyed, yet so long as kings of the Franks remained, the dignity of Rome would not perish. "Some, however, of our doctors," so he continues, "say that one of the kings of the Franks will govern the Roman Empire, whole and entire. He will belong to the last age of the world, and will be the greatest and last of all kings, who, after prosperously governing his kingdom, will come in the end to Jerusalem, and lay down his sceptre and his crown on the Mount of Olives."[2]

[1] Bouquet, v. 574. It is said that when Lothair was crowned in Rome in 823, the Pope granted him "potestatem quam prisci imperatores habuerunt super populum Romanum." Paul Diac., *Cont. Rom. SS. Rer. Lang.* 203. As a further illustration of the ideal unity of the Frankish kingdom, cp. Luitprand's remarks upon the coronation of Wido [*Ant.* i. 15], "Wido Romam profectus absque Francorum consilio totius Franciae unctionem suscepit imperii."

[2] Hoveden, ed. Stubbs, iii., p. 80 ff.

This singular letter had not been written many years when the King of Saxony, Otto the First, restored the empire, which had fallen into decline. That a representative of those Saxons who, for thirty-three years, had taxed all the powers of Charles the Great to subdue them, should have succeeded to the office which Charles had held is to be accounted for by several considerations. The Carolingian house had died out in the eastern half of Francia, and the western branch was less powerful than the Dukes of Normandy and of Paris. During the last years of the Austrasian Carolings, Saxony and Frisia were devastated by the Northmen and the Danes; Utrecht, Cologne, and Trèves were burnt to the ground; and Aix served as a stable for the horses of the invader. In the first nineteen years of the tenth century Germany was harried eight times by the Hungarians, and a bastard, a child, and an injudicious Franconian successively displayed their political incompetence. Then the Saxons saved Germany. A great victory on the Dyle in 891 put an end to the inroads of the Northmen. Two great victories, won by the first two Saxon kings in 935 and in 955 respectively, settled for ever the western boundaries of Hungary; and once again learning and religion revived among the Saxon nation which had won for itself these triumphs, and which in purity of blood, in pride of race, and in martial habits was pre-eminent among the German peoples. Classical scholars were invited to leave Italy for the Saxon Court like that Gunzo of Novara, who is said to have introduced the writings of Plato and of Aristotle into Germany, and Greeks, Spaniards, and Irish followed in their train. A high-born ecclesiastic like Bruno, brother of Otto the Great, who is reported

to have learnt Greek at Utrecht, and to have restored to Germany the almost forgotten seven liberal arts, discussed problems of philosophy with Greek and Latin doctors, neglected his food for the sweet music of Prudentius, and never travelled without his book-box. The Comedies of Terence were read seriously by an archbishop and travestied by a nun, for if theology was regarded as the end of all human studies, secular literature was the instrument by which that end could be attained.[1] Even Otto the First himself, who knew Frankish and Slavonic, set himself painfully to learn Latin in middle life.

The achievements of the first two Saxon kings, Henry the Fourth and Otto the First, caused them to be looked up to as the natural defenders of Latin Christianity against barbarism. The intellectual atmosphere of the Saxon Court was sufficient to generate imperial ambitions. The political condition of Italy soon afforded a pretext for intervention.

In the year 950 Lothair, the titular King of Italy, suddenly died. He was the son of Hugh of Provence, a wicked adventurer, who, having for twenty years in vain tried to get possession of Rome and of Lombardy, had eventually in 945 retired to his home in France, renouncing all his Italian claims. He was married to a Burgundian princess, Adelheid, the daughter of Rudolf the Second of Burgundy, who had died in 937, leaving a boy of ten years old as heir to his throne. The Pope at this time was Agapitus II., a Roman by birth and a man of shrewd sense, who had already corresponded upon ecclesiastical matters with Otto, and who may, for aught we know, have

[1] Ruotger, *Vita Brunonis*, c. 8, "Causam in divinis instrumentum in gentilibus libris."

written to him letters such as Stephen III. wrote to Charles Martel. For the Pope was in the hands of the Roman Alberic, who ruled the city and its neighbourhood with a rod of iron for twenty-two years (932-954) under the title of the Prince and Senator of all the Romans. He would naturally desire to be rescued from the hands of a man whose face appeared upon the papal coins, whose agents ruled among the Sabine hills, and who disposed of the papal office at his own pleasure.[1] There was a still more important factor in the situation than Agapitus. Immediately on the death of Lothair, the Lombard crown was seized by Berengar of Ivrea for himself and for his son Adalbert. Berengar was a name not unknown to Italian history. A Berengar of Ivrea, grandfather of this man, had gone nearer to forming an Italian kingdom than anyone since the death of Theodoric. The grandson may have felt that he too was capable of expelling the Saracens, and of uniting the Italians into a polity. He had suffered under the foreign domination of Hugh of Provence, and had actually at one time fled across the Alps to Otto for protection against the Provençal. It was natural that he should seize the Lombard crown, and that by way of extinguishing Provençal claims he should wish to marry the widow of Lothair to his son.

This step brought Otto into Italy. The widow was twenty and beautiful. She was imprisoned by the father of her suitor. She implored help of Otto. The Saxon was a widower of thirty-eight, but he was romantic, bold, unconventional, and restless. He felt

[1] Alberic and his mother Marozia both attempted to ally themselves with the Byzantine Court. Pitra, *Analecta novissima*, i., p. 469 ; Duchesne, *Les Premiers Temps*, pp. 174, 175.

himself more or less responsible for Burgundian princes and princesses, for he had intervened to restore order in the kingdom in 948, and had taken the young king Conrad under his protection. He had, perhaps, received letters from the Pope; he had undoubtedly been in communication with the Imperialist party in Rome. He certainly knew that the city of Rome was in the hands of an upstart tyrant, who was giving himself a quaint, unprecedented title. He had probably been told that he was the greatest monarch since Charles the Great, as he clearly was. He was no mere vigorous barbarian like his father, the Fowler, and, though far from being a saint, he was possessed by a large sense of duty. He knew that he ruled over the German capital of the Carolingian Empire, and that not fifty years ago the German Arnulf, a bastard, had besieged Rome and won the imperial crown. The German duchies were in the hands of friends and relatives. The enterprise was romantic, honourable, and safe. In 951 he crossed the Brenner.

The event of this invasion only partially realized the Saxon's hopes. Civil war in Germany recalled Otto before he had obtained the Roman crown. Yet something had been accomplished. Otto had married the widow, and had opened negotiations with the Pope for the imperial coronation, which were probably defeated by Alberic. For a time he was actual master of Lombardy, and though he does not appear to have been crowned with the iron crown, he had styled himself king of the Lombards.

A young and ambitious debauchee, John XII., the son of Alberic, sat upon the papal chair, and found that his temporal schemes were thwarted by Berengar. In a moment of danger he either lost his

head or allowed himself to be coerced by ecclesiastical advisers and appealed to Otto for deliverance. Otto was now in a position to respond to that injudicious appeal. In four years he changed the political face of the peninsula. Berengar and his wife were driven across the Alps to exile in Bamberg. The king received the imperial crown in the Lateran Palace. Two Popes were deposed after a solemn trial, in a synod convoked by the emperor, and the Romans were forced to swear that no Pope should in future be elected or consecrated without the express confirmation of the emperor or his son. A century before, Pope Nicolas I. had tried a temporal prince. Now a temporal prince, despite all that the Isidorian decretals had said, tried and deposed two Popes, and claimed a right which no temporal prince had claimed since the expiration of effective Byzantine rule in Italy, the right to confirm papal elections. But the most important result of all was the assumption of the imperial crown. The whole history of Germany and Italy was altered by the event which took place in the Lateran on February 2, 962.

"Strong and pleasant, discrete and warlike, with the face of an angel, the father of orphans," such are the terms which an Italian poet applies to his new master.[1] There were those who viewed the enterprise with less favourable eyes, and who shrank in horror from the hideous Wends and the coarse Germans in the emperor's host. But the true significance of the act was only revealed in the course of time. The historian of the Ottonian house, Widukind, who is strangely ignorant of any details outside the border of his own Saxony, for whom the Thuringians are cowardly and

[1] Du Méril, *Poesies populaires*, pp. 271, 272.

stupid, the Franks false, and the Lorrainers fickle, understands by the event nothing more than the subjection of Rome to his fellow-tribesmen. For him the empire differs not from the kingdom. The conqueror of the Wends and Bavarians has made but one more successful raid. There were others like Ruotger of Cologne and the author of the *Continuation of Regino*, who saw that the empire opened a wider field to German ambitions. But as yet there was no questioning or regret. It was only when the young Otto the Third, more a Greek than a German, tried literally to revive the Roman Empire of antiquity, that some saw the tragedy and hopelessness of the enterprise. "The sin of this king," says Bruno of Querfurt, "was that he would not look upon the land of his nativity, delectable Germany. So great was his love of inhabiting Italy, where savage destruction runs armed with a thousand languors and a thousand deaths. . . . The land of Romulus, fed by the death of his dear ones, still pleases him better with her adulterous beauty." "He designed," says another, "a great and impossible task, for he tried to raise the virtue of the Roman Empire to its power under the ancient kings."[1] That was a spark of true insight. How far was the task of a Roman emperor consistent with the obligations of a German king?

[1] Bruno, *Vita quinque Fratrum*, SS. xv. 722, 723; *Gesta Pont. Cam.* l. 114; SS. vii. 451; Thietmar, iv. 47.

CHAPTER II.

THE RACES OF GERMANY.

In the first century a Roman historian could write a book upon the manners of the Germans. The title and the treatment of Tacitus' famous monograph implies the belief that behind all tribal differences there was a fund of civilization common to all the German peoples. If the German tribes themselves knew no name to denote their common origin, if they only felt their common kinship in some dim inarticulate way, yet to the foreign observer the differences which might exist between the customs of one tribe and another were merged in the fundamental resemblance which underlay them all.[1] The German speech, the German physique, the German life seemed to be homogeneous, to conform to a common type. Until the fifth century there was no settled tribal system to stereotype local varieties of physique and of custom. The tribes were small, many of them were nomadic, all of them were warlike. If at times they grouped themselves in large confederations, in a western confederation under Arminius, or an eastern confederation

[1] The first document found on German soil which contains a common name for the German peoples is dated 961 [*Mancipiis Theutonicis et Slavonicis*], Dümmler, ii. 626, *Am.* 13. It is not till the *Anno Lied* and *Kaiserkronik* of the twelfth century that the name is applied to the land.

under Marbod, such unions were dissolved almost as soon as formed. The names of the tribes change like the colours of a kaleidoscope. Caesar gives us one set; Tacitus gives us another; later writers show new arrivals and combinations. The division between North German and South German peoples, which has been so fatal a bar to national unity, had not yet shown itself. The Goths, who settled in Italy, and the Lombards, who followed, were both originally inhabitants of the Baltic plain; and for a time it seemed that if the German tribes were to be split into groups corresponding to geographical divisions, they would divide upon the lines of east and west rather than upon those of north and south. The Rhenish tribes, whose military activity and political sense had been stimulated by antagonism to Rome, would find themselves in more or less permanent antagonism to the eastern tribes, who were perhaps more backward, but who were able to group round the powerful kingdom of the Marcomanni. The fall of the kingdom of the Marcomanni in 166; the turbulent history of Pannonia, which for some two hundred years became the hippodrome of invading and conflicting tribes; the decline in the power of Rome, which alone could have given consistency to a German confederation of the East; the continual drift of adventurous Teutons south of the Alps and west of the Rhine, first into the Roman legions, and then into the lands depopulated by the combined influence of pestilence and overtaxation; the wholesale migrations into Italy, Spain, and Gaul at the beginning of the fifth century; the sudden appearance of Attila and his Huns in the middle of that century; and the immediate subjugation of the Eastern Germans to the Hunnish

yoke, all combined to retard any revival of that peculiar combination of forces which is associated with the names Arminius and Marbod. Yet the tendency to divide into eastern and western groups has been from the earliest times apparent among the German peoples. Philologists speak of the East German and of the West German, as well as of the Low German and of the High German tongues, and this pair of philological antitheses points to an important historical fact.[1] The first distinction refers to the relative geographical position of the German peoples before the migration. The East Germans are the Goths, the Vandals, and the Scandinavians; the West Germans are the later Germans, the Frisians, the Franks, and the Anglo-Saxons. The second distinction refers to the relative geographical position of a section of the West German peoples at a much later epoch, when the German dialects of the north and south began to differentiate themselves. The Low Germans are the Saxons and the Frisians. The High Germans are the Swabians and Bavarians. But the division of the German tribes into northern and southern groups, though it came to be dictated by climatic and racial no less than by geographical considerations, is a relatively late political phenomenon. The Goths of the fifth century, the Lombards of the sixth and seventh, the Saxons of the eighth and ninth, the Franks from the fifth century onwards, are divided into eastern and western groups. During the Merovingian period the contest between the Austrasian and Neustrian Franks is almost unremitting, though it would be unsafe to assign to it the character of national warfare, or to attribute any

[1] Zimmer, "Ostgermanisch und Westgermanisch," *Zeits. f. d. A.*, xix., pp. 393, 962. For the later development of High German, cf. Baxmann, "Schwaben und Alamannen," *F.D.G.*, xvi. 217-277.

motive to the combatants other than the desire for plunder and power. But when once this division into Eastern and Western Frank had stamped itself upon the Treaty of Verdun in 842, and came roughly to coincide with the lines partitioning romance speech and civilization from Teutonic speech and civilization, this principle of grouping seems to have been exhausted. There is no further division of the Teutonic population east of the Rhine into western and eastern folk. There is no marked difference between the tongue spoken by the peasant of the Black Forest and that spoken in the far east of Bavaria, and a Tyrolese minnesinger can wander the whole length of southern Germany to the Rhine, and make his songs understood of the people. The geographical difference which will tell in German politics, from the death of Charles the Great onward, will be the difference not between east and west, but between north and south.

The internecine wars of the Germans must not be put down to tribal hostility. The numerous instances of intermarriage between reigning German families, from Theodoric to Charles the Great, the fact that the wars of the Germans were even more often waged between members of the same family than between one tribe and another, are evidence of this truth. It was the custom of the adventurous German to enter into the war company of the prince, who could offer him the fairest chance of fighting, and there is every reason to suppose that the adventurer in search of military fame would not feel himself restricted by the narrow bond of his own tribe.[1] For several centuries, too, Germans had been accustomed to enlist in the Roman legions, a fact which argues considerable de-

[1] Cf. Bede, *Hist. Eccl.*, iii., c. xiv.

tachment from the tribal bonds which are generally regarded as having been so strong in ancient times.[1] If the drift of adventurers into the Roman camp was large, still greater must have been the eagerness to enlist in some famous German war-band. Indeed, when the time came for the German races to pour in large volumes over the boundaries of the Roman Empire, the invading hordes were often composed of many constituents. Thus the Lombards were accompanied into Italy by Saxons and Slaves. The Alans, Huns, and Suevi formed a single company for the enterprise of Spain. There were Quadi serving with Radagaesus and his Goths in Italy, while it is probable that the Burgundians who invaded Gaul were a very mixed race indeed. The large amount of intercommunity between the Saxons, Jutes, and Angles who invaded England, as illustrated by the shifting supremacy which Kentish, Northumbrian, and Saxon overlords exercised in turn over tribes other than their own; the ease with which Charles the Great was able to enlist soldiery from every part of his vast empire except Saxony; the rapid successes of church missions in Germany and England, and the fact that it was unnecessary to make serious allowances for local peculiarities over the whole German-speaking world, testify to the essential unity of the German race. The *Niebelungen Lied*, which, although written down in the thirteenth century, preserves some of the earliest memories of the race, tends to show how slight was the repellent, how great the attractive, force exercised by the different atoms of the Teu-

[1] The extent to which Germans became Roman citizens, and disguised their origin under Roman names, is noted by Mommsen, *Neues Archiv. für alt. d. Gesch.*, viii. 351.

tonic world upon one another. The great epic is composed of Norse and Flemish, of Burgundian and of Gothic saga. It is interwoven with the memories of Attila's brief but impressive dominion in Germany—memories which, doubtless, were thrown into many a song during the incessant forays of the eleventh century on the Hungarian border. A Burgundian king marries an Icelandic princess; a Burgundian princess marries first the hero of the Netherlands, and then the king of the Huns. Theodoric the Goth, under his legendary appellation of Dietrich of Bern, appears as the good friend of the Burgundian visitors to the court of the Huns. The Margrave Gero is the famous Saxon Margrave who founded the German rule between the Elbe and the Oder in the reign of Otto the Great. Rudiger, the impersonation of all the knightly virtues, the courteous emissary of Etzel or Attila, the chivalrous supporter of the Burgundians, the father-in-law of one of the three Burgundian kings, is himself a Bavarian,[1] The epic presents a picture of a homogeneous civilization. It is assumed that a native of Worms would find himself as well received in Iceland or in Hungary as in any Rhenish town. The whole drama rolls upon a domestic tragedy, in which tribal vengeance and clan animosity play no part. Beyond one possibly satirical allusion to the insecurity of the Bavarian highways, there is no word in the poem, if we exclude late Christian interpolations, which assumes or implies

[1] Another Bavarian who figures in the poem is the famous forger, Pilgrim of Passau [971-991]. He forged five papal bulls and a letter from Hatto of Mainz to an unknown Pope, to prove that Lorch was an archiepiscopal see before Salzburg. Also he forged three grants of immunity and an imperial letter. In the poem he is Kriemhildes' uncle. Cf. Dümmler, *Pilgrim von Passau und das Erzbisthum Lorch*, 1854.

that a Burgundian was a better man than a Bavarian, or a Bavarian than a Hun.

It is difficult to say how deep were the linguistic differences between Northern and Southern Germany at the beginning of this period. The court of Charles the Great and his successors must have contributed to form a polite language out of Rhenish Franconian, a language which has left some memorials of itself in the Oath of Strassburg, in the *Ludvigslied*, in the names of the months and winds given by Einhard, and in the translation of Isidore.[1] But the literature at the Court of Charles was Latin, and the models upon which the writers of his age formed themselves were derived from classical antiquity. Rhenish Franconian consequently never became a settled literary speech. There is hardly a monument of this dialect which agrees with any other in its orthography or its grammatical forms, and it can have exercised but little influence over the history of the German language.[2] Although the king of the Germans continued to be crowned at Aachen, the old Frankish capital; was expected to wear the Frankish dress and to live Frankish law; although his court was filled with the ecclesiastics of the Rhenish towns, and he was constantly travelling through all parts of the empire, yet local dialect still tinges his speech. The "pleasant Saxon accent" of Otto the First was recollected as curious, three generations after

[1] For specimens of early Frankish, cf. Müllenhoff, *Denkmaler*, lxiii., lxiv., lii., lxxiii., xl. For Frankish of the Salian period; *ib.*, lxxvi., xxx., xxxi., xxi. For the whole question of the influence of the Frankish court, cf. Socin, *Schriftsprache und Dialecten in Deutschland.*

[2] This is contrary to Socin's view. The *Hildebrandlied* however, upon which he relies, is admittedly either the work of a Low German working on a Bavarian copy of a Frankish original, or a Westphalian translation of a High German poem, or a High German recension of a Low German poem. In any case a literary *Umarbeitung.*

his Christmas visit to Regensburg in 960.[1] We suspect that if the accents of a king were odd, those of a peasant would have been unintelligible. On the other hand, there is no reason to believe that these linguistic bars were very strong, or that they were keenly felt. The tradition of the Frankish Empire, the constant movement of the German kings, and the attraction which their court possessed for the nobility, must have tended to create some form of polite dialect for the upper classes.[2] When the empire passed away from the Saxon house this dialect doubtless became more and more High German in character. The Low German language, despite the vigour of those who spoke it, lost caste under the Franconian and Swabian house. It became a merchant's language and a peasant's language. The official documents of the Hanseatic towns were written in it. But the language of poetry and of polite life was the High German tongue, talked and sung at the court of the Hohenstauffen.

There is no document of the tenth century which gives us any characterization of the various peoples of the German Empire, but an anonymous bard, probably of the twelfth century, draws us a sketch in a few bold rollicking strokes. Swabia is noble and proud, disdains foul languages, breaks its promises when it has pocketed its reward. Flanders is garrulous, rich, complacent, honest. Brabant is a land of brave soldiers. Frisia is audacious, silly, barren, rebellious. Bavaria is prodigal, lascivious, slow, deceitful, subtle and inconstant, sociable, gross in morals, jocose in

[1] Arnolfus, *Praepositus S. Emmerani*, SS. iv., p. 552.

[2] The *Lied de Heinrico* [Müllenhoff, *Denkmaler*, xviii.] shows High German to have been written by some one at the court of the Saxon emperors in the tenth century.

speech. Austria is a bounteous giver, but clamorous and excitable. The Thuringians steal your money and your wine. Saxony is shrewd, faithful, reverent, a careful husband of its resources, an enemy of prodigality. Westphalia is discreet and tenacious, and a land of fair women. Hard Hesse rejoices in plunder and lies. Franconia is clever, and its wine is good.[1]

The last of the four German races to appear upon the theatre of history was the Bavarian. A Frankish document of 520 gives a list of folk-names, among which the Bavarians figure, and this is the first certain mention of the Bavarian name in history.[2] About the year 540 the Gothic historian Jordanes alludes to the Bavarians as lying east of the Swabians, and the chance notice of this writer is the first piece of literary evidence which we possess that the Bavarians were settled in that part of Germany which has ever since borne their name.[3]

The origin of this race, which appears so late and so suddenly upon the plains of the Danube, is wrapped in obscurity. A curious blunder led some medieval historians to derive them from Armenia. Other writers living before the days of exact philology identified the Bawarii[4] with the Keltic Boii, and this confusion,

[1] "Carmen de populis Europae," ed. Waitz, *F.D.G.*, vol. xxvi. 153; also Wattenbach, *Anzeiger des Germanischen Museums*, xxi. 213, xxviii. 268.

[2] Müllenhof., *Abh. d. Berl. A.*, c. i. 862, p. 537; Waitz, *D.V.G.*, ii. 74, n. 4; *F.D.G.*, xviii. 188; Riezler, *Gesch. Baierns*, vol. i., p. 8.

[3] *Jordanis Getica*, c. lv., ed. Mommsen [M.G.H., *Auct. Ant.*, iv. 1]. In 565 we have a mention from Venantius Fortunatus, *Vita S. Martini*, iv. 644 [M.G.H., *Auct. Ant.*, iv. 1].

[4] The earliest forms of the name were Baioarii, Baiovarii, Baiuwarii, Baiuvarii, Bawarii, Bawari. The old High German form is Peigirâ, Peiarâ. The forms Bayer for Baier, Beier, appear first in the later Middle Ages, and do not become official till the reign of Louis I. (Riezler, vol. i. p. 11).

originally traceable to Jonas of Bobbio in the seventh century, and decked out by the ill-directed pedantry of the local chroniclers of the Renaissance, has survived to the present day in the title of the collection of Bavarian documents published by the Munich Academy, the *Monumenta Boica.* Philology, however, claims to have made it certain that, whatever else the Bavarians may have been, they were never Kelts, and German science is now divided between three alternative hypotheses upon this curious but unimportant point. Some contend that the race was originally Gothic, being composed of the remnants of the Rugian, Turcilingian, and Skirian tribes, who, under King Fava, inhabited the plain of the Danube, and who were defeated but not annihilated by Odovacar in 487, 488. Others identify them with the Alamanni or Juthungs. Others again hold that the Bavarians belonged to the great Suevic tribe, which, according to Tacitus, originally embraced the Semnones, the Lombards, the Marcomanni, the Quadi, and several other tribes.

According to this view the story of the Bavarians would run as follows: Upon the break-up of the great Marcomannic kingdom of Marbod, some broken remnants of his war-band were planted by the Romans in the Carpathian mountains, under a certain King Vannius of Quadrian origin. For thirty years Vannius ruled his camp of fugitives, but at the end of that period he was overthrown, and his followers, under the leadership of two nephews, unloosed, so it would appear, from their moorings by the shock of battle, gathered round them warriors from all quarters, and grew into a powerful people, known to the Romans as Suevi, Quadi, Transjugitani, and also as

Βâιμοι.[1] Then came the great Marcomannic war (165-80), at the end of which the Romans were victorious over the Marcomanni with their Suevic neighbours and their Sarmatian allies. From that time onward the Marcomanni ceased to be a power, and we last hear of them among the German peoples who served in the army of Attila. We must look now for the Marcomanni and their kinsmen the Quadi under other names. They will sometimes be called Suevi and Alamanni, but as, feeling the pressure of the Slavonic Czecks, they move away from their Bohemian settlements into the valley of the Danube, devastated and almost denuded of its Rugian inhabitants by the troops of Odovacar, they will begin to be called by their neighbours after the mountain-girt land from which they came. They will begin to be spoken of as the men of Bohemia, the men of Baias, the Baioarii.[2]

Whatever be the details of the tribal migrations which form the Bavarian nation between 448 and 520, three conclusions may be regarded as highly probable. In the first place, the Bavarian nation was a very composite and a very new social aggregate. In the second place, it was predominantly Suevic or Swabian. In the third place, it received its name from certain Bohemian settlers, who may be regarded either as the first or as the most important element of the new tribe.

[1] According to Quitzmann, *Abstammung Ursitz und älteste Geschichte der Baiwaren*, the name is derived from *uuâra*, old High German for "league," and *bai*, Gothic for "both." The double league would be the league of Goths and Marcomanni under Vannius.

[2] For a summary of these theories, cf. Gengler, *Beiträge zur Bayer. Gesch.*, vol. i., p. 9, where a most voluminous bibliography of early Bavarian history will be found.

The Bavarian nation was a composite body,[1] and the invading tribes came to a country which was probably sparsely populated by peoples of very diverse origin. There might be remnants of the Vindelici who were Celts, remnants of the Rugians who were Goths; and among the hills and Alpine spurs, constituting about half the country settled by the Bavarians, many a hamlet or village of Latin-speaking folk did undoubtedly survive. The character of the country—its long tracts of hill and mountain, its vast forests—must have prevented dense tribal settlements and the rapid formation of a distinct tribal individuality. The terminations of an enormous number of place-names show that the settlements were originally forest-clearances made by some pioneering backwoodsman, and the total silence of contemporary or subsequent chronicles as to the migration of the new people can best be explained upon the hypothesis, that some miscellaneous loosely-compacted band of colonists, without notable leader or long-standing corporate traditions, slipped obscurely into an empty land, and then broke up, as each family group wound its way into the heart of the forests, or pierced the mountain glens which run down towards the Danube from the Alps.[2]

Nearly three hundred years separate this abstruse

[1] It is perhaps some evidence of this that in the *Lex Bawarica* five noble families have a higher wergild than the rest of the Bavarian nobility, which seems to point to five royal families of five original tribes (Riezler, i., p. 123). R. Sachsse, *Historische Grundlage des deutschen Staats und Rechtslebens*, sees in these five names the four court offices. For various theories, cf. Gengler, i., p. 26.

[2] For terminations denoting forest-clearance, cf. Riezler, i., p. 68. The village appears to have been a comparatively late phenomenon in Bavaria, as it was in Norway. For Bavarian Einzelhöfe, cf. Riezler, i., p. 135, and Meitzen, *Siedelung und Agrarwesen*, i. 417. For the Slavonic round villages in Bavaria, Meitzen, *Siedelung*, iii. *Uebersichtskarte.*

settlement from the final incorporation of Bavaria in the Frankish Empire of Charles the Great. Frankish writers have much to say about the characteristics of the Saxons; Byzantine writers have much to say about the characteristics of the Franks; but nothing is said by anybody about the Bavarians, if we except a remark made by Fortunatus and repeated in two places in the *Niebelungen Lied*, that a man should consider himself lucky if he had travelled through Bavaria without falling into the hands of robbers.[1] Nor does the political history of Bavaria during these centuries show any marked individuality. From about 555 to 788 the Bavarians were ruled by a ducal family, the Agilofings. Men dispute as to whether these Agilofings were Bavarians or Goths or Franks; but whoever they were, the country was throughout the period of their rule a Frankish dependency. There is no sign of violent conquest.[2]

The Bavarians seemed to have acquiesced as passively in the conquests of Theudebert as they acquiesced in the conquests of Lewis XIV. Three of their dukes were deposed by their Frankish suzerain, the last in the twenty-fourth year of his reign, without exciting a murmur. One of them, Tassilo III., received his duchy as a fief from Pippin II. in 748, the first instance, in which a post involving political sovereignty was brought under feudal rules. In the Bavarian law, which was drawn up between 740 and 750, it is stated that if the duke should be so audacious, and contumacious, and fickle, and wayward, and elate, as to despise the king's decree, he was to be deprived

[1] Venantius Fort., *Vita Martini*, iv.; *Niebelungen Lied*, ed. Lachmann, 1114, 1242.

[2] Richter, *Annalen der deutschen Geschichte*, i., pp. 61-63.

of his dignity, and to know that he was condemned to lose the hope of salvation;[1] and the supremacy of the Frankish king is emphasized in many other places. Almost incessant fighting with Avars and Slaves, a hereditary dynasty of dukes, connected by many ties with the Lombard kings, a capital in Regensburg, these circumstances were not sufficient to drill the Bavarians into any effective achievements. It is a remarkable fact that the Agilofing dukes have left no memories behind them; that the Bavarian folk-songs know Alboin and Dietrich of Bern, but have no word for Odilo or Tassilo; that not a single Bavarian chronicler has illustrated this period of his nation's history; and that despite the fact that the last three Bavarian dukes founded more churches and monasteries than any other medieval rulers in the same space of time,[2] only one saga connected with an Agilofing can be shown to have been concocted in a Bavarian cloister.[3] The dynasty fell without a protest, and the Bavarians fought as faithfully under the Swabian prefect Gerold as they had fought under Duke Tassilo.

Throughout this period the Frankish influence was predominantly felt. The law of the Bavarians was written down between 739 and 748, at the command of the Merovingian king. It contained provisions

[1] *Lex Bai.*, ii. 9; Mederer, *Leges Baw.*, p. 88, suspects the passage to be a Carolingian interpolation on the ground that it does not occur in Bavarian MSS. Its substance is, however, confirmed by events.

[2] The Agilofings practically converted Bavaria [which had been mainly heathen and partially Arian] to the Catholic faith. At the fall of the dynasty, 788, the bishopric of Salzburg contained 67 churches of ducal foundation (Stutz, *Geschichte des kirchlichen Beneficialwesens*, vol. i., pp. 197, 198).

[3] Tassilo III., defeated in a bloody battle and blinded by the victor, wanders to Lorch, where angels escort him to the altar. The legend appears to originate at Kremsmunster (*M.B.*, xiii. 503; Riezler, l. 171).

borrowed from the *Lex Alamannorum* of Lanfrid, and from the *Lex Antiqua* of the Visigoths. It was also due to Frankish influence that supplementary clauses were added, probably during the minority of Tassilo III., certainly under the immediate influence of Pippin, which determine the constitutional position of the duke, and give to the Bavarians their first instalment, both of public and of ecclesiastical law. The *Lex Bawariorum* speaks in no uncertain tones as to the relations of Bavaria to the Frankish kingdom. The duke is appointed by the Frankish king, and can be deposed by him; the country is styled a province; the army can be summoned either by the king or the duke. The administration is cast into a Frankish mould. The duke summons assemblies of the clergy and nobles to deliberate either upon ecclesiastical or secular affairs; he is surrounded by vassals who have presumably received benefices; he sends his *missi* or emissaries to control the regular officials and to see that justice is administered. The land is divided into *gaus* or counties, presided over by a *graf* or count, and into hundreds. The collections of formulae used at Salzburg and Passau and St. Emmeran are Frankish. There is a Frankish constitution, a Frankish court, possibly also a Frankish ruling family.[1]

Theudebert had boasted that the extension of his rule to the Pannonian border was equivalent to a

[1] The *Lex Baiuwariorum* is printed *LL.*, iii., p. 183 ff. Riezler, Merkel, and Roth think it was the result of successive redactions; Waitz, Gförer, Brunner, and Schröder think that it was all written down at one time. For a bibliography of the controversy, cf. Gengler, *Beiträge*, i., pp. 13, 14. The collections of formulae are: (1) *Liber breviarius unius cuiusque rei*, compiled by the orders of Arno of Salzburg; (2) *Formulae Patavienses*; (3) *Formulae Codicis St. Emmeranensis.* Cf. *Quellen z. Bayer. u. d. Geschichte*, vol. vii., and Zeumer, *Formulae Merow. et Karolini Ævi* [M.G.H., *Leg.*, sect. v.].

Catholic victory,[1] and indeed Bavarian Christianity owes everything to the Franks. Bishop Rupert of Worms, who came to Bavaria in 696, who founded the bishopric and monastery of Salzburg among the ruins of the Roman Juvavum, was allied to the Merovingian house. Bishop Emmeran of Poitiers did not even know the German tongue, and was obliged to employ an interpreter. The founder of the church of Freising was Corbinian of Charettes, near Melun, had been brought into close connection with Pippin of Heristal, and had received from him a large sum of money; and the efforts of St. Boniface, the organizer of the four Bavarian bishoprics, were zealously furthered by the Frankish kings, Charles Martel and Pippin the Short. When the law of the Bavarians in the eighth century encourages donations to churches, protects clerks and monks, and punishes the murder of a bishop by the alternative of an impossible fine or slavery, it is giving to the new Christianity a constitutional dress of the Romano-Frankish type. Throughout the early period of its history Bavaria is singularly passive. It provides the second lieutenants of the religious movement. "The generals are in turn Celts, Franks, and Swabians."[2]

It is perhaps some evidence of the extent to which Bavaria had been already incorporated in the Frankish system during the Agilofing period, that Charles the Great, so far as we know, only found it necessary to make two of his capitularies specially applicable to that country, and that these contain only one provision

[1] Bouquet, iv. 59, "In 591 the synod of Aquileia complained that the sees of Noricum were filled with Franks." Riezler, i., p. 90, The Agilofing synods were clearly influenced by the capitularies of Verneuil and Verberie, 755, 756; Riezler, i., p. 158 ff.

[2] The remark is Riezler's.

which can be called organic, the provision by which the eight royal pleas or *Banfällen*, which carry with them the penalty of the royal ban of sixty shillings, are extended to the Bavarians.[1] We must also assume that such of the capitularies as were not specifically designed for other parts of the empire, were applicable to Bavaria and were applied there. The division of the popular courts into the normal and specially-summoned courts, the constitution of a college of seven assessors (*scabini*) to assist the court, in place of the old Bavarian *judex*, the registration and control of military benefices, and the more complete absorption of Bavaria into the military system of the Franks, date from this period.[2] Nor were these Frankish influences likely to be diminished in the ninth century, when a branch of the Caroling family settled in Bavaria and made it the centre of their empire.[3]

The ease with which Christianity and the whole Frankish system was imposed upon the Bavarians forms a striking contrast to the difficulties which met the Franks in their efforts to subject and to assimilate the Saxons. The southern climate, the sparseness of the population, the novelty, looseness, and composite character of the Bavarian race, the survival of Latin-speaking villages, the existence of Roman roads, and the remains of Roman towns, the proximity of Italy and of the province of Aquileia may all have contri-

[1] "Capitula quæ ad legem Baivariorum domnus Karolus addere jussit, 801-13" (Boretius, pp. 157-9); *Capitulare Bavaricum*, 810; and to this should possibly be added a law [the text of which is lost] raising the compositions paid for offences in Bavaria (Merkel, *LL.*, iii., p. 132).

[2] Riezler, i., pp. 266-69; Sohm, i. 372-98, 409, 435.

[3] Lewis the German may be called the first of the Bavarian emperors. Three of his successors, Carloman, Arnulf, and Lewis the Child, were born in Bavaria. Lewis, Carloman, and Arnulf were on the mother's side connected with Bavarian families (Riezler, i., p. 95).

buted to facilitate the process. The Bavarian dukes may have striven at times to throw off the western yoke, but the Church regarded the successors of Clovis as her appointed champions, and the profuse piety of the Agilofing house only served more completely to fuse the Bavarian duchy with the kingdom of the Franks.

If the Frankish intervention, so often repeated, and at last so continuously exercised, introduced Bavaria to civilization, the Slavonic and Hungarian wars of the ninth century must have maintained the spirit of the race, until an event happened on July 5, 907, which sharply arrested its development. A chronicler tells us that on that day the Bavarian race was almost entirely destroyed in battle by the Hungarians.[1] Christian culture perished utterly out of Pannonia; the frontier was pushed back westward to the Enns, and from that date until Otto's victory of 955 the country was continually ravaged by the Magyars.

This disaster made easy the way for Saxon supremacy. In spite of the fact that the civilization of Bavaria had been more advanced, that three of the Carolings had been born in the country, that Regensburg had been the German capital since the time of Lewis the First, that there had been a considerable trade in the Danube in the ninth century, as is evidenced by the toll-ordinance of Charles the Great, that the county contained many ancient towns, Bavaria was now unable to accept the political leadership of Germany. And the disaster of 907 had another effect. It raised to power a new ducal dynasty. Its founder Luitpold, Margrave of the Bohemian and Carinthian marches,

[1] For a collection of reports, cf. Richter, *Annalen der deutschen Geschichte*, ii., p. 536.

perished in the field, leaving behind him a son, Arnulf, who rallied the remnants of the Bavarian people, fought stoutly and sometimes successfully with Magyar raiders, obtained for himself the title of Duke, rebelled in turn against three German kings, and ruled his fellow tribesmen for thirty years [907-37]. It is possible, too, that the disaster of 907 had a further result. According to all our evidence, the human loss was very great. It is probable that almost the whole of the Bavarian nobility perished, besides an enormous number of smaller folk.[1] The consequence would be that new settlers would find their way into Bavaria to fill up the gaps, and these settlers would come mainly from the west. The Lech was not a strong geographical boundary. There was no strong ethnical boundary either between Swabians and Bavarians, and the destruction of the Bavarian nobility in 907 must have led to further Swabian infiltration. It is a curious fact that the Pannonian Slaves, as early as the end of the ninth century, call Bavarians and Swabians alike by the name, Sueve, and that the Germans are called Schwab to this day in Hungary.[2] Poets and prose writers of the thirteenth century have much to tell us of the Bavarian. He is a pattern of stupidity. Men say, "As stupid as a Bavarian." When he speaks he roars like an ox with his coarse and ferocious voice. A great eater and drinker, a proverbial robber, but renowned for bravery and swordsmanship.

[1] There was a prayer in the Bavarian litany, "Ab incursione aliegenarum libera nos domine" (*Quellen und Erörterungen*, vii., p. 473). For the devastation, cf. Hauck, *Kirchengeschichte Deutschlands*, iii., p. 154.

[2] For Swabian influence in Bavaria, cf. Riezler, vol. i., *passim*. R. notes (α) that a mixed Swabian and Bavarian dialect is now spoken east of the Lech; (β) that the place names of Swabia and Bavaria have many common terminations which are rare or not found elsewhere; (γ) that there are many affinities between Bavarian and Swabian law.

"A servant talks about fighting there more than thirty knights anywhere else." [1]

Mixed in race, with weak frontiers east, west, and north, incorporated in the Frankish Empire for more than a hundred years, Bavaria still maintains laws, customs, and characteristics of its own. Men go on professing the Bavarian law, and by this they mean partly the written law of the eighth century and partly the unwritten custom which had gathered round it.[2] The Bavarian litigant draws his witness into the court by the ear.[3] When the Bavarian is required by the donee or purchaser to warrant his gift or purchase, he goes to the four corners of the field, or to the boundaries which have been marked out, and takes up a clod of earth, or a handful of grass or leaves, if it be woodland, saying three times, "I have handed it over to you and I will lawfully warrant it to you." Then he gives the earth or grass to the donee or the purchaser with his left hand, while he offers a pledge to the claimant with his right hand. And if the claimant says, "You have given unjust warranty," then they go to battle.[4] So, again, when a noble takes possession of a piece of untilled land, he summons his slaves and villeins, and they cut trees, burn fires, build houses to advertise the title.[5] And there are many special forms of Bavarian conveyance.[6]

[1] Wackernagel, *Die Spottnamen der Völker. Zeitschrift für deutsches Alterthum*, vol. vi., pp. 254-261.

[2] Gengler, *Beiträge*, vol. i., p. 155.

[3] *Lex Bai.* xv. 2, xvi. 2, 5 [*LL.*, vol. iii.]; Grimm, *R.A.*, pp. 14-54 [third edition]. The custom can be traced up to 1180, and seems to be native Bavarian.

[4] *Lex Bai.*, xvii. 2 [*LL.*, vol. iii.], Grimm, *R.A.* (third edition), p. 15.

[5] *M.B.*, xxix. 125.

[6] *Traditiones Rorenses*, p. 188. For the Bavarian penalty for incest, *M.B.*, xxix., p. 125.

A clerical enthusiast has described the country in the following terms.[1] The region of the Bavarians is noble, rich in woods, fertile in vines, abounding in iron, gold, silver, and dyes. The soil is fertile, cattle and sheep are plentiful. The ground is covered with bees and honey. The rivers and lakes are full of fish, the fountains and streams are pure. There is plenty of salt. The mountains are good for pasture and rich in grass. The forests abound with stags, and buffaloes, and goats, and all kinds of beasts.

Material comfort, easy-going affability, political insignificance, have been the main notes of Bavarian history.

During the reign of Caracalla a new German people approached the Roman frontier.[2] These were the Alamanni, a name which, according to a Roman writer of the third century, Asinius Quadratus, denotes the mixed character of the race. Most modern writers have accepted this etymology, which is borne out by the fact that a number of special tribal names are found in the region settled by this race during the Roman period, and that each of these tribes seems to have been ruled by its own king. Thus we have the Bucinobantes on the right bank of the Main, the Brisgavi in the Breisgau, the Lenthienses in the south-east of the Black Forest, the Juthungs or Jutuges in the Upper Danube. The bulk of the nation was probably formed by the Semnones, who are first discernible in the Lausitz, and are described by Strabo (A.D. 24) as a powerful Swabian tribe, and by Tacitus

[1] Aribonis, *Vita St. Emmerani*; cf. Gengler, *Beiträge*, i., p. 40.

[2] Stälin, *Geschichte Wurttembergs*; Baumann, *F.D.G.*, xvi. 215-227; Kaufmann, *Deutsche Geschichte bis auf Karl der Grossen*; Richter, *Annalen des deutschen Reichs* may be referred to. The Alamannian laws are published in *LL.*, vol. iii., pp. 1-182.

as the head of the Suevi.[1] Driven out of their former homes by the pressure of the Lithuanians and the Slaves, these Semnones fought their way south-westward to the upper waters of the Main, where they came into violent contact first with the Hermunduri and then with the Romans.

For two hundred and sixty-one years (213-474) the Alamanni were the scourge of the Roman Empire. The victories of Probus, of Diocletian, of Maximian, of Constantius Chlorus, seem to have had but little effect upon this redoubtable people of warriors. The three invasions of the Emperor Julian obtained only a short-lived respite for the harassed empire, for in 366 the Alamanni ravaged Gaul and attacked Mainz. Then, when at the beginning of the fifth century the Roman defence broke down, these barbarians pushed southwards and westwards into the hill country south of the Danube, into northern Switzerland, into Alsace, and into the valley of the Upper Rhine. From this new basis plundering expeditions radiated out on every side. But the establishment of the Burgundians west of the Jura, of the Ostrogoths in Italy, and of the Franks in Northern Gaul, confined the Swabian people within the limits of their own county. The conquering and aggressive epoch of the Alamanni passes away; the passive and defensive epoch begins. In 474 they are beaten by the Goths, in 481 and 496 by the Salian Franks. This last defeat is decisive.

[1] Several derivations have been suggested both for the term *Alamann* and for the term *Swabian*. The most obvious derivation for the first word is suggested by Agathias' [*Hist.*, i. 6] comment ξυνήλυδες εἰσιν ἄνθρωποι καὶ μιγάδες. *Alah* (temple) and *Ala* (noble) have been suggested. So, too, the Swabians are either (1) the unsteady people [*swîpan*, *swepên*, to swerve], or (2) the peaceful people [*swebjan*, to put to sleep], or (3) the free people [*suoba*, freedom]; cf. Stälin, pp. 47, 49.

From this time the Alamanni accept all things from the Franks—laws, religion, civilization. Captive Rome, coming by a round-about route, takes captive its ancient enemy.

There is little recoverable Swabian history during the Frank period. It appears that the victors conquered the northern parts of Alamannia, and that these regions still bear the Frankish imprint in their local nomenclature.[1] The Alamannian dukes were either nominated by the Frankish kings, or closely connected with their court. The device of rebellion is tried and fails, and after the death of Lanfrid, who resisted Charles Martel, the last vestige of Alamannian independence disappears. Alamannia is incorporated with the kingdom of Austrasia, and is given by Charles Martel to his eldest son Carloman, who broke the rebellion of Lanfrid's brother Theutbald, and in 746 massacred an Alamannian force apparently in cold blood at Cannstadt.

Irish missionaries completed what Frankish arms had begun, and the extreme rapidity with which Alamannia submitted to the yoke of the Roman Church is evidence of the fact that the spirit had been taken out of the race. The Frankish king Chlotaire III. (620-660) legislated for the subject country, and no other body of German folk-right is equally full of stringent ecclesiastical provisions. The bishop's wergild is equal to that of the duke; the priest has a triple, the deacon and the monk a double wergild; ecclesiastical buildings are guaranteed the right of asylum, and the acquisition of Church property is facilitated. When, in 729,

[1] *Ach*, *brunn*, *felden*, *hofen*, *ingen*, *schwand*, *stetten*, *wangen* are Alamannic endings. *Bach*, *berg*, *born*, *dorf*, *feld*, *hausen*, *heim*, *statt* are specially Frankish (Stälin, pp. 62, 65).

Duke Lanfrid issues a revision of this law-book, "with the consent of the chief men of his duchy, and of the whole folk," he only ventures upon two additions, and these are not directed against Frankish rule. Nor do the Frankish kings pay any heed to the territorial unity of Swabia. In the partition of 806 Swabia was divided between Charles and Pippin; in 842 it was shorn of Alsace. The Swabians fought in the imperial armies against the Saxons in 778, against the Avars in 791-96, the Bohemians in 816, the Bretons in 818, the Slaves in 820, the Aquitainians in 832, the Moravians in 869. They served under Arnulf against the Northmen in 891, against the Moravians in 892, in Burgundy and Italy in 894. No German people appeared to be more completely incorporated in the empire.

It was not, as we have seen, a homogeneous population, and alien elements were added in the course of time. In the North there were many Frankish settlers. Here and there we should find Saxon colonies settled by Charles the Great, and there are Slavonic settlements in the northern regions, as we can tell from names such as Windisch, Niederwinden, and the like. But the country appears to have been fairly populous, judging from the place names which appear in the documents of the period.

At the beginning of the tenth century the failure of the Carolings and the attacks of the Hungarians throw the peoples of Germany upon their own resources. The extinct Swabian dukedom revives. There is a Duke Burchard who was slain in 911 "on the false judgment of a certain Anselm." Then, after him we hear of two brothers Erchanger and Berchtold, whose sister Cunigunde married first Margrave Luitpold of Bavaria and

then King Conrad. These men are illustrious in Swabian saga, great fighters against the Hungarians, against Bishop Solomon of Constance, against the emperor himself; fortifying the Hohentwiel, afterwards so famous in Swabian feuds, against the royal army, and beating it in the open field at Stockach; at last condemned by a synod of bishops for treason against their king and lord, for imprisoning a bishop and for offering injury to churches; slain by the orders of the king, their brother-in-law, four months afterwards, which was a notable breach of faith, involving much recrimination.[1]

These rebels became popular heroes, but the most powerful people in Swabia were the Bishops of Basle, of Strassburg, and of Constance. It is important to keep this fact in mind, because the bishops were nominated by the crown, and their fidelity helped to keep Swabia faithful to the Saxon house.

Between Saxony in the north and Bavaria and Franconia in the south lay the Thuringians and the Franconians. Swept along in the motley host of Attila in 450, utterly conquered by Theuderic the Frank in 530, condemned to receive Swabian and Hessian and Frisian settlements, raided by the Saxons in the north, tributary to the Frankish monarchy in the west, continually attacked by the Wends in the east, the Thuringians never rise to the front rank among the German nations. Their kingly house came to an end in 531,[2] and until Lewis the Bearded and his son founded the Thuringian Landgraviate, at the beginning of the twelfth century, the land of the Thuringians appears to have had no separate unity. We hear of them partly

[1] *F.D.G.*, vi., pp. 131-146.

[2] The interesting story is told by Greg. Tur., iii. 4, 7, 8.

as vassals of the Archbishop of Mainz, partly as belonging to the Saxon nation. They have no duke, no political organization, no large towns. Their ancient code, the so-called *Lex Angliorum et Werinorum id est Thuringorum*, which was drawn up in the time of Charles the Great, probably in 802, was intended merely for the inhabitants of the north-east corner of the country, for the Angle colony, which meets us afterwards in Merseburg, and for the Thuringians who lived in the Engilingau, or county of the Angles. It was a collection of borrowings from the Frankish, Frisian, and Ripirarian laws. It was never expanded nor improved, nor do we find men professing to live Thuringian law during the period covered by this essay.[1] The north Thuringians had been conquered by Saxony, and lived Saxon law, and it is probable that the Thuringians of the south, such at least as were not of Swabian origin, professed the law of the Franks. They were an unimportant people, attached either to the fortunes of Saxony or Franconia, humbly feeding pigs among their pine-clad hills, steadfastly tussling with the Wend upon their eastern border. Their history is illuminated only by two events during this period—the tithe war against the Archbishop of Mainz in the reign of Henry IV. and the brilliant court of the Landgrave Hermann, the trashy Maecenas of the thirteenth century, who, despite many political apostacies, is celebrated in the verse of Walther von der Vogelweide, and indeed in every story of German literature.[2]

[1] *LL.*, v., p. 103; Brunner, i., p. 349 ff; Schröder, p. 244.

[2] *Die Gedichte Walthers von der Vogelweide*, ed. Paul; cf. esp. 75, ll. 81-90. For a picture of the Landgrave's room and dining hall at the Wartburg, cf. Otto Henne von Rhyn's beautiful *Kulturgeschichte des deutschen Volkes*, vol. i., pp. 242-3.

Franconia[1] has a history of her own, which is curiously different from that of the other German nations. From the fifth to the ninth century the Franks had been the most effective and successful branch of the Teuton race. Their conquests had spread from the Ebro to the Save, from the Elbe to the Tiber. They had made the Roman Empire of the West a Frankish possession, and their arms were followed by their institutions. But the period of conquest ended with the life of Charles the Great, and the age of dissolution set in. The empire of the Franks gradually fell into three parts, which roughly corresponded to the later nationalities of Germany, Italy, and France. The most energetic members of the race were settled west of the Rhine, and the Eastern Franks or Franconians, who inhabited the towns on the Middle Rhine and the valleys of the Neckar, the Main, the Tauber, and the Regnitz, were possibly weaker individually, and certainly less closely organized. Although the King of Germany continued to be crowned at Aix, the Frankish capital, and to live Frankish law, the Franconians play a far less conspicuous part in German history than the three other races. They have no tribal duke or tribal constitution. They never acquired any political unity at all.[2]

There are two reasons for this. The Franks of the

[1] The form Franco occurs in the *Lex Salica*, tit. 44, the name Franconia first in a charter of 1053. The first official use of the term dates from the middle of the thirteenth century, when Franconia became a bailliwick of the order of German knights. The term, however, only applied to Eastern Franconia, and excluded the Rhine districts (Stein *Gesch. Frank.*, i., p. 5 ; ii., pp. 199, 200).

[2] Eberhard [949], who serves at Otto the First's coronation, is never a duke in the sense in which the Duke of Bavaria was one. He is merely "Comes potentissimus in Francia"; cf. Stein, *Gesch. Frank.*, i., p. 107 ; ii., p. 290 ; and *F.D.G.*, xxiv., pp. 121-152.

Rhine valley were in the main absorbed by the towns, which rapidly acquired extensive political powers and economical importance, and forestalled the formation of strong feudal territories in their immediate neighbourhood. Rhenish Franconia thus became, on the one hand, a land of towns, each pursuing its own separate interests, and a land of knights and lesser nobles on the other. Its history can best be studied in the chronicles and charters of Worms, and Mainz, and Cologne, and also in the family histories of the Hessian nobility.[1]

The story of the growth of the great ecclesiastical immunities in the eighth, ninth, and tenth centuries; of the part played by the Rhenish towns in the War of the Investitures, when Worms and Cologne threw in their lot with the emperor against the party of the Church; of the victories of the Rhenish armies in Italy during the wars of Barbarossa; of the development of Rhenish commerce in the twelfth and thirteenth centuries; of the origin of the town councils; of the struggle of the towns against the bishops in the time of Frederick II.; of the town leagues during the Interregnum; of the traditions which cling to the numerous imperial palaces in this quarter of Germany;[2] this would make an animated and varied canvas. But the pigments would not be specifically Franconian; there is no sign that any incident or sequence of incidents is controlled by the consciousness of a common Frankish nationality. Town-walls swiftly disintegrate

[1] For information as to Hesse, cf. H. B. Wenck, *Hessische Landesgeschichte*, and Himly, *Histoire de la formation territoriale des Etats de l'Europe centrale*, ii., p. 317 ff.

[2] For the palaces in Rhenish Franconia, of which Tribur, Coblentz, Hagenau, Boppart, Wesel, and Oppenheim were the most important, cf. Wenck, i., pp. 36-56; and Mabillon, *De Re Diplomatica*, L. iv.

the tribe; town-life swiftly creates new needs, and new needs create new law.

Further east along the valley of the middle Main, and outside the boundaries of the old Roman province, things were more backward. Here there were no Roman cities. The trading depots in the east, Erfurt, Hallstadt, Forchheim, Priemberg, mentioned in a document of 805, where the Wend changed wares with the Frank, must have been little more than villages in the ninth century.[1] The civilization of Eastern Franconia radiates from the churches and from the imperial palaces. There are palaces at Frankfort, at Forchheim, at Salz, at Langenzenn. There is the bishopric of Wurzburg and the bishopric of Eichstadt, and on the north-western boundary, in the Buchonian Forest, the great abbey of Fulda.[2] Large imperial estates on the one hand, active ecclesiastical centres on the other, this conjuncture is decisive for the future of Eastern Franconia.[3] Watch the history of the country during the wars of Charles the Great against the Saxon. The spiritual conquest of these barbarians is entrusted to the Franconian prelates. Sturm, Abbot of Fulda, who christianizes south-western Saxony and converts an East Saxon prince; Megingaud, Bishop of Wurzburg, who undertakes the Saxon mission, and his successors in the see, who have spiritual control

[1] *Capitulare Missorum in Theodonis villa datum*, Boretius, i., p. 123.

[2] Ficker, *Vom Reichsfürstenstande*, pp. 340-343. In 1150 the king speaks of Fulda as "Ecclesiam regalem et principalem totius Germaniae abbatiam" (*ib.*, p. 342). The monastery of Hersfeld in Hesse may be added to the number of Franconian foundations, for Hesse lived Frank law (Schröder, *Die Franken und ihr Recht*).

[3] Inama-Sternegg, *Gross Grundherrschaft*, p. 26, reckons the number of crown estates in Franconia at the end of the Carolingian period at 83. At Lamprecht's calculation this would amount to 207½ square miles (Lampr., *Deutsches Wirthschaftsl.*, i., p. 718, n. 1).

of the country till the foundation of Paderborn in 795, do not go without their reward.[1] Even in the ninth century, Franconia bade fair to become the "priests' alley." By the end of the Caroling period, Wurzburg, which had probably received a charter of immunity from Pippin, was endowed with lands in almost all the Frankish counties. The emperors, who frequently reside at Frankfort, are not suffered to forget the claims of these invaluable and insinuating ecclesiastics, who live so near the great Crown estates, and are so skilled in turning their opportunities to account. Beside these bishops and abbots, the lay nobles, such as the Margrave of Schweinfurt, the Counts of Rothenburg, Abenberg, and Hohenlohe are comparatively powerless. Their best road to wealth and consideration is to enter the Church, and fill the chapters of Wurzburg or of Eichstadt.[2] Time and piety, the diffusion of imperial estates in East Franconia, the necessity for converting the Slaves, fight steadily on the side of the dead hand. A series of charters from 822 to 1025 builds up the ducal powers of the bishop of Wurzburg.[3] By the time of Adam of Bremen there was not a county in his diocese, in which he did not exercise jurisdiction.[4] In 1125 Henry the Fifth recognizes that the bishop possesses judicial authority over the whole of Eastern

[1] Large numbers of Saxons were transported by the Frankish kings into Eastern Franconia, as some of the village names—Sachsenhof, Wüstensachsen, Kleinsachsen—testify (Stein, ii., p. 258).

[2] From 990 to 1104 Counts of Rothenburg appear to have held the bishopric of Wurzburg with two exceptions [1034-1075], when the see went to Carinthians (Stein, *Gesch. Frankens*, ii., pp. 310, 311).

[3] The genuine surviving charters of immunity are dated 882, 889, 918, 923, 992, 1012, 1025. In these documents allusion is made to privileges of Pippin, Charles the Great, Otto I., and Otto III. (Stein, ii., pp. 321-325).

[4] Adam. Bremen., iii., p. 45, SS. vii. 353.

Franconia, and the royal privilege which conferred these powers must have dated from the reign of Henry II.[1] According to a charter of Frederick I. in 1168, which is confirmatory of previous grants, the bishop has all jurisdiction and full power of doing justice through all the bishopric and duchy of Wurzburg, and through all the counties situated within the limits of the bishopric or duchy, concerning rapine and arson and allods and benefices and blood vengeance. And no one may make hundreds or hundredmen in the aforesaid bishopric or duchy or counties situated in them, save by the leave of the bishop or duke of Wurzburg.[2]

This ducal bishop is, in fact, a petty king. He coins money; he levies a land tax, a tax on flocks and wood, a tax on markets. He exacts extraordinary benevolences [*donationes*]. His council is a kind of provincial parliament attended by his advocate, his feudatories, his *ministeriales*, and the men of the province; and there is evidence of these provincial parliaments forthcoming from the second half of the eleventh century. In the ninth century the Bishop of Wurzburg is commissioned by the emperor to regulate the trade in some of the towns on the Slavonic border. In the year 1000 he extracts a charter from Otto the Third, which grants special privileges to alien husbandmen, who will come and reclaim his forests and marshes, and the advertisement is successful. In the eleventh century Saxons and Nordalbingians are tilling the land of the bishop, who has taken the lead in the work of agricultural

[1] *M.B.*, xxix., pp. 238, 239, "Dignitas judiciaria in tota orientali Francia"; cf. Stein, ii., p. 320.

[2] *M.B.*, xxix., pp. 385, 389.

exploitation in Eastern Franconia, and who, through the munificence chiefly of Otto the Third, has swallowed up most of those imperial estates, which appear to have been so excellently managed by Charles the Great.[1] When the emperor goes upon the Italian journey, the bishop of Wurzburg sends a tolerable force into the field, for which effort he recoups himself by taking a round sum from the chapter, and a subsidy from every monastery in the province, which is subject to the see.[2] In the twelfth century the bishops might almost have assumed the title, which, as a matter of fact, was first claimed by Godfrey IV. in 1445, of Duke of Franconia.

The bishop of Wurzburg was not alone. In 1018 a new ecclesiastical principality was added to the list of East Franconian sees. The piety of Henry the Second founds the bishopric of Bamberg for the purpose of converting the Slaves upon the eastern border. Fortified by a row of privileges extending from the period of foundation to 1103, the bishop of Bamberg becomes almost as important a personage as his rival of Wurzburg. He too holds a court,[3] keeps his butler and chamberlain and marshal and steward, holds diocesan synods, does justice, exercises forest rights, legislates for the different classes of his province. Two early specimens of this ecclesiastical legislation for Eastern Franconia have survived—a decree of the bishop of Wurzburg upon the position of the shoemakers in the city, and a decree of the bishop of Bamberg regulating the status of his *ministeriales*.

[1] Gengler, *Beiträge zur Bayerischen Geschichte*, vol. iv., p. 81; *M.B.*, i., pp. 21-24; Grimm, *R.A.*, 313, 314.

[2] Gengler, iv., p. 59.

[3] In after times we hear of the *ministeriales* wearing "the Bamberg colour" (Von Maurer Fronhofe, ii., p. 350).

As few documents give so clear an insight into the internal economy of an episcopal see, this last specimen of ecclesiastical legislation shall be quoted:

"This is the justice of the *ministeriales* of Bamberg.[1] If his lord accuses any one of these of anything, the accused may absolve himself by oath with his peers except in three cases; that is, if he is accused of conspiring against the life of his lord, or his chamber, or his fortifications. But to all other men he can answer on oath concerning any objection with his peers without the advocate, and to all other persons he only owes seven oath-helpers, but to his own comrades twelve. If he be killed, his recompense is ten pounds, and this belongs only to the agnates of the slain man.

"If a man have no benefice from the bishop, and shall have represented himself to be in his service, and cannot obtain a benefice, let him take service with whom he pleases, not as a beneficiary, but freely.

"If he die without children and his wife be pregnant, wait till she bring forth. If the child be a male, let him have the benefice of his father. If not, let the nearest agnate of the deceased have his breastplate or his best horse, and offer it to his lord, and receive the benefice of his relative.

"When he goes on an expedition, let him come to his lord at his own expense, and afterwards let him be sustained at his lord's expense.

"If the expedition be to Italy, let his lord give one horse and three pounds for every breastplate. If

[1] *Embrichonis Episcopi Ordinatio*, 1128; Gengler, *Beiträge*, iv. 77. For the "Justicia ministerialium Babenbergensium," cf. Furth, *Ministeriales*, i. 509, 510; Gengler, *Beiträge*, iv., pp. 153, 154.

elsewhere, let two of the beneficiaries pay the expenses of the third.

"Let them not be constrained by their lord save to five services; that is, let them be stewards or butlers or chamberlains or marshalls or huntsmen."

Eastern Franconia, then, is a land of ecclesiastical principalities, served by small armies. The bishops are nominated in reality by the king, and their forces are at his command. As a race the Franconians give no trouble to the monarchy, and the Ottos, who gave away palaces and estates to Wurzburg and Eichstadt were perhaps prudent in their generosity. Franconia certainly stood by the Saxon house, and in no quarter outside Saxony itself were the emperors of that race so loyally served. The Franconian crown estates were perhaps not too heavy a price to pay, for the *usufruct* in reality still belonged to the emperor, whenever his court travelled through the land or his summons was issued for the host. The strength of the bishops meant the weakness of the lay-nobles, and the break up of tribal bonds. But the piety of the Carolings and the Saxons brought a nemesis in the end, for one of the main agents in the downfall of the Medieval Empire was the territorial ambition of the princes of the Church. Yet, on the whole, if we take Eastern and Rhenish Franconia together, there is no portion of Germany which throughout history has been so faithful to the imperial ideal. The Franconian knights looked up to the emperor as the model of chivalry, and to the empire as the safeguard of their tiny territories.

Of the four races which go to make up the German kingdom at the beginning of the tenth century, two are already famous for conquest and for colonization. These two are the Saxons and the Franks. Both of these

races originally came from the plains of the Saale and the Elbe, but while the first pursued its way down the Elbe valley to the sea, and dwelt upon the coast centuries before the Frankish wanderings began, the second descended through Hesse to the Rhine, and planted itself in the civilized Roman province of Gaul. The one enters the theatre of history as a seafaring people, the other as a race of hard fighters by land. Since the middle of the third century the Saxon pirates are the terror of the British Channel and of the coast of Gaul. In the course of the fifth century they have founded colonies at Angers and Saumur and Bayeux, and a band of Saxon warriors, invited into Britain to defend the land against the Picts, settles upon the southern and eastern shores of the island, and gradually builds up for itself a kingdom which stretches from the Channel to the Tyne. With this fateful exploit the maritime history of the Old Saxons comes to a close. They no longer dwell upon the Frisian shores, and only some place names in West Flanders survive to indicate their former home.[1] The sea coast becomes monopolized by the Frisians on the north-west, by the Danes on the north, by the Baltic Slaves on the north-east.[2] The race henceforth inhabits the wide space which lies between the Elbe and the Rhine, a fertile plain for the most part, especially as it nears the Saale or the Rhine, but containing large tracts of moor and fen and forest.[3] The boundary line nears the Rhine at Xanten, then runs by the headwaters of the Sieg, eastward to where the

[1] Meitzen, *Siedelung und Agrarwesen der Germanen*, vol. ii., pp. 10-20.

[2] Adam of Bremen, ii. 28, speaks of the naval battles of the Danes as something peculiar to the race: "Sic enim ea gens confligere solet." For the early reputation of the Saxons, cf. Orosius, vii., c. 32. For their defeat by Syagrius, Greg. Tur., *H.F.*, ii. 19, 27.

[3] Adam of Bremen, i. 1.

Fulda and the Werra join the Saale, and then northwards by the line of the Saale and the Elbe to the river Eider. Settled in this rich and defenceless plain, the Saxons become an agricultural people, developing a form of house architecture of their own, which stands in marked contrast to that of their Frankish neighbours.[1] But the memory of the heroic sea-period of their history is preserved in the Epic of Beowulf, and in the collection of songs which went under the name of *Vidsich* or the *Wanderer*, songs telling of the encounters of Saxons, Frisians, and Danes, with Myrgings, Jutes, Goths, and Huns at the Eider's mouth.[2]

The land, which by the eighth century had come to be called by the Saxon name, was originally inhabited by other tribes, one of whom, the Engrian or Angrivarian, has stamped itself upon the nomenclature of part of the district. But in the course of the fourth and fifth centuries the Saxons, who are represented in all the early traditions to have been a small band of warriors, rapidly vanquished their neighbours, and succeeded in reducing the various tribes of Westphalia, Engria, and Eastphalia to dependence. So completely was this work accomplished that, by the end of the eighth century, the Saxons produced the impression of being a singularly pure and homogeneous race.[3]

The physical boundaries of Saxony were, as we have seen, the Rhine on the west, the Eider on the north, the Elbe and the Saale on the east. The southern

[1] Meitzen, *Siedelung und Agrarwesen*, vol. iii., pp. 280-318, where pictures and plans are given.

[2] Ludv. Weiland, *Die Angeln, in der Festgabe für G. Hanssen*, Tübingen, 1889, p. 132, quoted by Meitzen, ii., p. 26.

[3] Even in the eleventh century intermarriages between Saxons and other nations seem to have been rare. "Hic cum non esset ortus ex Saxonia ducit uxorem natam de Saxonia" (Bruno, *De Bello Sax.*, c. 14).

border was unmarked by any clear geographical features, and it is here that there was incessant fighting between the Saxon and the Frank. But although the physical boundaries were not strong, it is clear that by the eighth century the Saxons were the only German people, who had preserved their primitive isolation, their primitive social and political institutions, their primitive religious beliefs. The purity of Saxon blood was admired by Einhard, and the purity of Saxon morals was lauded by Boniface. Divinations were exercised and auguries taken by the priest of the people and the father of the family. The flights and voices of birds, the movements and neighings of horses were anxiously observed. Prayers were offered to fountain, stream, and wood, and the Saxon race still brought gold and silver and cattle to the wooden image of Irminsul, the Pillar of All, in its sacred grove, and for thirty-three years poured out its blood in defence of Wotan, and Donar, and Sachsnot against the Frankish missionaries of Christ.[1]

The appearance of the Saxon was distinctive; his tall figure, his blue eyes, his streaming yellow hair, his heavy knife stuck in the belt were described by the Franks, and it was remarked that few individuals deviated from the common type. The four tribes into which the race was divided—Westphalians, Eastphalians, Nordalbingians, and Engrians—lived side by side in a kind of loose unity, differing from one another in slight points of dialect and custom, without common assembly or, except possibly in time of war, common leader. There is no king, there were no towns, there was no central authority. Even the tribe itself was loose and unorganized, and such affairs as needed settlement would be treated in a smaller area, the county or *gau*.

[1] Müllenhoff, *Denkmäler*, lvi.

The character of the agricultural settlements varied from place to place. West of the Weser the peasant holdings are scattered and isolated, lying each in the centre of its group of fields, which are bounded by a hedge or a ditch. East of it the villages conform to the regular German type—the houses clustered together in a shapeless mass, and the streets weaving an intricate and a labyrinthine network.[1] The methods of cultivating the soil appear to have varied with the locality. Here we find the three-field system, here the four-field, here the two-field, here the one-field. But although it is tempting to account for the later dissensions between the eastern and western half of Saxon duchy by referring them to some primordial difference of race or social organization, the evidence is too slight to support the argument. In the eighth century the fact which impressed Western Europe was the peculiar unity of the Saxon race, their cast-iron social divisions, the severity of the Saxon law, which visited with the death penalty the man who should marry a woman of a rank higher than his own.[2]

Thirty-three years of intermittent but hard fighting reduced this people to the Frankish rule of Charles the Great. The conditions or the results of the final peace were stated by Einhard to be that the Saxons should renounce idolatry, that they should accept the Christian faith, and that they should become one people with the Franks. The best commentary upon this statement is afforded by a study of the two legal enactments affecting Saxony during the reign of Charles—the *Capitulatio de partibus Saxonie* of 782, the *Capitulare Saxonicum* of 797. The first ordinance is the

[1] Meitzen, *Siedelung und Agarwesen*, ii. pp. 53-97.
[2] *Tr. S. Alex.*, SS. ii. 674-6; Adam. Bremen., i. 6.

edict of a victor, who, after a long and desperate struggle, is at last in a position to settle the conquered country. The Frankish political system is imposed upon Saxony. The king is the lord of the land, and the violation of fidelity to the king is to be punished by death. The king's ban of sixty shillings, which was payable throughout the Frankish dominions, as the penalty of disobedience to a royal order, is introduced here. The king too was made the supreme judge of the land, and no one was to be prevented from seeking in the royal court the right, which had been denied him. Below the king came the count and the priest. The count is the judge and the guardian of order. The priest is entrusted with the work of civilization. No meeting of Saxons may be summoned except by the king's commissioner or by the count. The new political and religious order is buttressed by penal provisions, which were probably not more severe than the occasion demanded. The penalty of death was ordained for perjury, the murder of a man's lord or lady, or the seduction of the lord's daughter, for sacrilege, for the murder of a bishop or priest, for the neglect of baptism, the eating of meat in Lent out of contempt for Christianity, for the burning of dead bodies according to heathen rites, for the burning of men as witches and sorcerers, for human sacrifices. Fines were exacted for heathen prayers and offerings by fountains, streams, and groves. The observance of Sunday and of the festivals of the Church was enjoined, and measures were taken to secure ecclesiastical endowment. All men without exception were ordered to pay tithes, and every 120 persons were compelled to contribute a male and female servant to work upon the manse of the Church.

It must be remembered that some of these penalties, the death penalty for perjury and infidelity to a lord, were part of the native Saxon custom; that the death penalty for treason against the king was exacted over all the Frankish Empire; that sacrilege was punished by death among the Frisians, and that the severity of the penalties for contempt of baptism, for heathen burial, and for the eating of meat in Lent are mitigated by the provision, that a person who has secretly committed a capital offence is excused the penalty, if he spontaneously make confession to a priest.[1]

The second Capitulary—that of 797—mitigates the severity of the first ordinance. Fines were substituted for capital punishment, and confiscation of property, and the king's ban was restricted to eight serious crimes, as was the case in the rest of the Frankish Empire, with the reservation that the king was empowered, with the consent of the Franks and faithful Saxons, to exact a higher penalty up to 1000 shillings in cases of breach of the peace and other grave offences. The Saxon penal law, in other words, was assimilated to the penal law which prevailed in other parts of Charles' dominions, the only difference being that the monetary tariff in Saxony was one-fifth lower than that in the rest of Francia, a circumstance which is explained by the economic backwardness of the country.

While Charles the Great was determined completely to incorporate Saxony in the empire, he had no intention of abrogating such portions of the Saxon custom as did not conflict either with his political or religious

[1] For these criticisms, cf. Mühlbacher, *Deutsche Geschichte unter den Karolingern*, pp. 127, 128. For the text of the Capitularies, Boretius, i., pp. 68-72.

system. Some of the penal provisions of the Capitulary of 782 had, as we have seen, been directly borrowed from the Saxon law. The Capitulary of 797 is marked by an even clearer deference to Saxon usage. It was obvious that, in matters affecting Saxony, the emperor intended to be largely guided by the advice of Saxons. Finally, in 802, Charles ordered the unwritten law of the Saxons to be written down, with such modifications as the incorporation of Saxony in the Frankish Empire had rendered necessary.[1] This severity and this wise abstinence from over interference made of Saxony a loyal people. They had suffered great losses in war; thousands of them had been deported into South Germany and Francia; Franks and Slaves had been imported into Saxony. A new religion had been forced upon them at the point of the sword, supported by new and odious taxation. But the careful education of Saxon hostages among Frankish cloisters, the selection of counts from the Saxon noble families, the preservation of the Saxon folk-right must have helped the process of assimilation. It is, at any rate, noteworthy that, during the revolts against Lewis the Pious, the Saxons remained constant to the imperial cause, and the missionary side of Charles' work was done once and for all. In after times a legend arose that Charles had given Saxony to St. Peter, and a pious fiction converted Widukind, the pagan leader of the Westphalians in the Saxon wars, into a scion of the Merovingian house and a Christian hero. A poem of the ninth century, written in the Saxon tongue, reflects the fusion between the new creed and the old barbaric life. In the *Heliand* the founder of Christianity appears as the leader of a

[1] *Ann. Laur.*, 802; Boretius, i., p. 105.

comitatus, and the disciples are his *comites*. The Christian story had put on a Saxon garb; the work of assimilation was going forward. In the ninth century Saxony could produce her missionaries and saints. In the tenth century she was capable of giving a lesson in religious devotion and moral purity to Europe.[1]

Yet we must not overrate the completeness of the Frankish conquest. It was not part of the Carolingian scheme to annihilate provincial diversities, to supplant provincial folk-law, to attempt social reorganization. So long as the Saxon became a decent Christian, paid his tithes, did his army service, obeyed his count, the Frankish sovereign would probably be content. It was left to the Church to effect such social changes as might conduce to the better ordering of his life.[2] The old fourfold tribal division still remained, and it appears that the ancient dissensions between these tribes prevented the appointment of a Saxon duke.[3] The Saxon folk-law remained, written, edited, expanded, Christianized, but still Saxon rather than Frank. When a German king came to be elected, the Saxons would ask of him that he should confirm this law. It was the price of their submission, and it was a price which no wise man would refuse to pay.

Religion, it is true, is a great leveller, and the

[1] Adam of Bremen [1-12] represents the country as having been divided into eight bishoprics, under Mainz and Cologne, immediately after the conquest. Mühlbacher (p. 146) observes that no bishop with a fixed see can be proved before 803. The oldest episcopal documents in Saxony (those for Verden, Bremen, Osnabrück) were forged in the eleventh century to obtain tithes.

[2] The influence of the Church was used to extirpate the old *gau* names: cf. the *Spurious Charter for Bremen* [Sickel, *Acta Karol.*, ii. 393, 394], "Huic parrochiae decem pagos subjecimus, quos etiam abjectis eorum antiquis vocabulis et divisionibus in duas redegimus provincias, his nominibus appellantes, Wigmodiam et Lorgoe" [Adam. Brem., i. 13].

[3] Adam. Brem., ii. 7.

Christian religion, as propagated by Frankish arms in the eighth century, had little respect of persons. But the way in which a new religion affects a race is determined by the character of the race which received it. To the Greek mind the Christian religion brought food for philosophy; to the Latin mind, food for law; to the Frankish barbarian it was at first regarded as an insurance against military failure, and then as a pretext for military aggression. When the Christian religion was first transported to Saxony, it entered a climate suitable to the development of simple piety. Saxony was then a poor land with but little trade. Its town life begins with Henry the Fowler, who found that, by building towns with fortified walls, it was possible to obtain shelter against the Hungarians, just as Edward and Athelstan built towns in Mercia to serve as barriers against the Dane. But these towns can have been little more than small military posts. Effective commercial life in North Germany begins with the foundation of Lubeck in the twelfth century and with the opening of the Baltic trade, but in the tenth century the Baltic was severed off from the Saxons by the Western Slaves. It was a land which ever since its forcible incorporation in the Frankish empire, had seen little of emperors or imperial affairs. The later Carolings seldom visit it. Arnulf only came there once for a campaign against the Abodrites, and the Saxons take but little part in the wars of the emperors. It was a land destitute of any material monuments of a civilized past, such as were the Roman roads and the great city walls which still survived in the Rhenish districts and in Bavaria, a land of small agricultural proprietors, who served on foot, their heads covered with hats of straw. Whereas in Bavaria,

Franconia, and Alamannia, large properties grew apace during the Carolingian age, while wastes and forests were busily reclaimed after the example set upon the imperial estates, Saxony had preserved much of the social equality of earlier times. She had doubtless suffered many evil things at the hands of Danes and Northmen, Bohemians and Hungarians at the beginning of the tenth century. The Slaves demolished the church of Hamburg, the Hungarians destroyed the church of Bremen, slew the priests at the altar, and carried clergy and people into captivity in 918. But in the Harz mountains the Saxons possessed a natural citadel; and though their lands were ravaged, their aristocracy was never decimated in battle. When Arnulf repulsed the Northmen in the Dyle in 891, and Henry the Fowler beat the Hungarians at the Unstrut in 933, Saxony was secure from serious external foes. The country had passed through the most terrible century of European history, without any social revolution or violent break in the continuity of its growth. Even cavalry service was unknown.[1]

Saxony, then, at the revival of the empire, was inhabited by a more homogeneous, a more simple, and probably—if we except the Frisians—by a rougher race than dwelt in any other part of the Frankish realm. It is true that they were still very barbarous. Count Gero invites a number of Slavonic chieftains to dinner and then treacherously murders them. A Slave dignitary is left on the battlefield deprived of eyes and tongue, and seven hundred captives are slaughtered in cold blood

[1] The chivalry of South Germany was always more famous. "Die Beier, die Swabe, und die Vranken," these are the knights of Medieval German song. Cf. Benecke, *Beiträge z. Kunde d. alt. deutsch. Lit.*, ii. 342; *Chanson d'Antioch*, ed. Paulin Paris, ii., sect. 31; Socin, *Schriftsprache und Dialecten*, i., p. 75.

after a fight. A Saxon duke is reported to be "a good and brave man except that he oppressed the people with rapine." Such barbarities were, however, incidental to the wars with the Slaves, and are not confined to the Saxon race. There is, at any rate, no record against the Saxons of such refined and brutal iniquity as is entered up against the Franks by Gregory of Tours. When a Saxon does a bold or tricky deed in battle, it is quickly thrown into a ballad, and when pedantry invaded the land it flattered the prevailing self-esteem by deriving the race from the Macedonians. These Saxons hated strangers, and clung tenaciously to old usages. When Unwan became Archbishop of Hamburg in 1013, he found pagan rites still celebrated in his diocese. When Adalbert came to Bremen in 1045 he discovered that polygamy was rampant, bloodshed held in honour, perjury frequent, adultery and incest scarce blamed, flesh eaten on Friday, on the Vigils of Saints and in Lent.[1] This, however, was in a wild part of the county bordering on the turbulent Holsatians.

But however tenacious may have been the life of Pagan superstition, Christianity had made a deep impress upon the Saxons long before the death of Otto the First. This simple, steady, agricultural folk, proud of its laws and customs, of its dress, its knives, its straw hats, with a rich vein of romance and adventure in its composition, with strong family affections, as yet unspoilt by luxury and undisciplined

[1] Adam. Brem., ii. 46, 55, 62. For the Saxon aversion to new-fangled ritual, *ib.* iii. 26. For their hatred of *advenae*, iii. 55. For the commemorative instinct, *ib.* ii. 30. For the alleged Macedonian origin, Widukind, i. 2. For Saxon moral judgments, Adam. Brem., ii. 21. For the character of the Holsatians, *Helmoldi Chron.*, i. 47. For a general judgment, "Erant enim inquieti nimis et finitimorum sedibus infesti, domi vero pacati et civium utilitatibus placida benignitate consulentes" (*Tr. S. Alex.*, SS. ii. 674-6).

by government, with its courage hardened by ceaseless warfare against Slaves, Northmen, and Hungarians, comes into contact with the cloister, with its strict life and its store of devotional and of classic literature. First of all it acts on the women, who are naturally more given to quiet and piety. Letters such as those of St. Anschar insisting on the virtues of chastity, will be eagerly circulated and multiplied. The daughter of the noble Saxon will be sent to a nunnery to learn handiwork and the psalms. She will either come forth again into the world, like Matilda, the wife of Henry the Fowler, and subsequently Abbess of Quedlinburg, who never drove abroad without scattering bread to beggars, who kept a special bath for the poor, and never stayed in a town during winter time without causing fires to be lit in every house, and even in the streets. Or she will be the woman of affairs, like that Matilda of Quedlinburg, sister of Otto the Third, who governed the empire during her brother's absence. Or else she will turn to literary work, like the much-scribbling and intolerable Hrothsuitha of Gandersheim. The literary and religious impulse then spreads to the men. A school of the palace is founded by Bruno, the brother of Otto the First. Endowments to churches multiply apace, and in 962 a Saxon archbishopric is established at Magdeburg. Henceforth the county is cut away from the see of Mainz. Both from an ecclesiastical and from a social point of view Saxony stands apart from the rest of the empire.

CHAPTER III.

THE GERMAN MONARCHY AND THE GERMAN RACES.

When Conrad the Franconian died in 919, it might have seemed as if the four German nations were destined to fall apart. The consciousness of common danger, especially from the Hungarians, the reminiscence of political unity, and some vague feeling of common kinship decided for the continuance of the German monarchy, and the crown, at the request of the dying Conrad, was given to Henry the Saxon.

For a hundred and five years the Saxon dynasty ruled Germany. Though the throne was elective, there was during all this period no counter candidate who received serious support, and it is significant of the influence of the dynasty, that the German people acquiesced in a twelve years minority after the death of Otto the Second, and that the policy of Otto the Third, which tended to sacrifice Germany to Italy, and Aix to Rome, was not sufficient to deter the electors from offering the crown to his nearest male relative on his death. The two great victories won over the Hungarians by Henry the Fowler and Otto the First respectively, the assumption of the imperial crown by Otto the First, the marriage of Otto the Second with the Byzantine princess Theophano, the vigorous prosecution of the Slavonic wars and the northern mission,

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The chief Slavonic groups are (1) the Wagrians and Abodrites in the March of Billung, (2) the Wiltzes or Luticii in the North March and the March of Lausitz, (3) the Sorbs and Wends in the March of Meissen and Thuringia. These were further subdivided: *e.g.* the Wiltzes into the Hevelli, Redarii, Ucri, Riaciani, etc.; the Sorbs into the Dalemincii, Milzeni, etc.

obtained for the dynasty a life-giving prestige. German unity, too, was promoted by the fact that at this juncture the crown went to the Saxon race, which was more compact, warlike, and vigorous than the other German peoples. If in 919 the German crown had been offered to Arnulf of Bavaria instead of to Henry of Saxony, nothing probably but the strongest ecclesiastical pressure could have prevented the formation of an independent Saxon kingdom. But with Bavaria decimated by the overthrow of 907, with Alamannia and Francia still rude, inchoate, and divided, it was possible for the Saxon kings to obtain the recognition of their supremacy in the south.[1]

Yet it is important to notice that the dominion of the Ottonian house was one thing in Saxony and another thing outside the Saxon borders. Henry and his descendants regarded themselves first and foremost as kings of the Saxons. It is remarked by Widukind[2] of Henry the Fowler, that he delighted to exalt his own race by promoting Saxons to high office, and an exclamation in that curious and passionate appeal with which Otto the Third, the least Saxon and the most Roman of his race, attempted to win back the loyalty of the Romans, "It is for love of you that I have sacrificed my Saxons and all the Germans," represents a feeling which is far deeper than the formal and unrealized phraseology of imperialism.[3] The authority of the Saxon house was in fact less contested in Saxony than it was in other quarters of Germany.

The philosophic historian must regretfully acknow-

[1] The almost complete lack of historical literature in Bavaria during the tenth century sufficiently attests the fact that there was little history worth telling. For the one fragment, SS. xvii., p. 570.

[2] Wid., i. 39.

[3] *Vita Bernw.*, c. 25, SS. iv. 769.

ledge that the secret of the revolts under the Ottonian house cannot be unlocked by one or even by two keys. The rebellion of Bavaria in 921, 938, and 953, may have been chiefly prompted by the spirit of tribal independence.[1] The revolt of Burchard, Duke of Swabia, against Henry the Fowler, was ostensibly grounded upon the Saxon origin of the new king. But it is natural for barbarians to fight, and personal animosities play a larger part in rude than in civilized societies. The rebellion of Liudolf, the son-in-law of Otto the Great, who was created Duke of Swabia, has been construed by some ingenious modern writers into a great national manifestation against the universal imperial policy of the king. These rebels, it is contended, were statesmen enough to protest against the sacrifice of substantial German interests to an intangible nightmare of empire.[2] The texts give no countenance to such an interpretation. Rather they show that this revolt, so brief and evanescent, had a different cause in the different provinces of the kingdom. In Bavaria there was general discontent against the new Saxon Duke Henry. In Saxony there was a party which was jealous of an upstart favourite of the king, Hermann Billung. In Swabia the personal popularity of the Saxon Liudolf secured him a following in an attempt to utilize the occasion of his father's absence in Italy to seize the crown for himself. The civil wars of the Ottonian period depended in part upon tribal but chiefly upon personal jealousies. Bavarians and Swabians fought with Saxons at the Unstrut in

[1] Thietmar, *Chron.*, i. 15, SS. iii. 742.

[2] Von Sybel, *Die deutsche Nation und das Kaiserzeit*, p. 34; Mauren-brecher, *Die Kaiserpolitik Ottos I.* [Sybel's *Hist. Zeit.*, v. iii.]; cf. Giese-brecht, *K.Z.*, i., pp. 392-409 and 828.

933, while the brunt of the great day of the Lech was borne by the Frankish horsemen and the Bavarian legions. Franks, Saxons, and Lotharingians compose the company with which Otto the First lays siege to Mainz in 953, and the burden of military service seems to have been successfully imposed upon the Southern as well as upon the Northern Germans by all the sovereigns of the Saxon house. A Saxon dynasty takes root in Bavaria,[1] and before half a century has elapsed a Saxon duke of Bavaria is styled Henry the Pacific. When a Saxon clerk can have no words to condemn a man like Wichmann, who, because his brother is preferred to him by Otto the Great, deserts to the Slaves and carries on war against his own countrymen, it is clear that people are not over-sensitive to racial differences, and that no loss of personal honour is involved when a man turns against his own kin. The amazing leniency of the German chroniclers to Germans who take service with Slaves or Bohemians, or even Hungarians, against their own race can only be explained upon the hypothesis that race feeling was not as yet sanctified at any rate in clerical circles. And if a Saxon would condone desertion to Hungarians, he was not likely to disapprove of a fellow-tribesman who took service in a Frankish company, or moved southward to colonize a Bavarian waste.

It was natural that Saxony should have been faithful to the Ottos; but when Otto the Third died in 1002 without a male heir, signs were not wanting that non-Saxon kings would encounter difficulties in this quarter. Henry the Saint was a Bavarian duke and

[1] The Saxon Duke Henry is, however, married to Judith, daughter of Arnulf, the Bavarian, and on his death Judith governs the county during her son's minority (Riezler, i. 357, and Thietmar, *Chron.*, ii. 41).

the son of a Bavarian duke. His family had been established in Bavaria since 955, and had ever since been involved in a traditional opposition to the Saxon emperors. He himself had rebelled during the minority of Otto the Third, and his election to the throne, which is distinctly stated to have been made without the knowledge of the Saxons, was regarded as a Bavarian triumph.[1] A pupil of the Bavarian reformer Wolfgang of Regensburg, Henry, reforms the Saxon monasteries after the model set in his southern country; and it is noticeable that all his great ecclesiastical appointments are made from his Bavarian chaplains.[2] Yet Henry, although not a direct descendant of the last Otto, was in many respects favourably situated for winning the loyalty of the Saxon people. He was, in the first place, of Saxon origin, being descended from Henry, the brother of Otto the First. Apparently he had been born in Saxony. He was a canon in a Saxon church, and had been educated by the famous Saxon teacher of the day, Bernward, who has left behind him so impressive a memorial in the massive doors of carven lead, which still adorn his church at Hildesheim. He claimed the crown, not only as the nearest male heir of the Ottonian house, but on the ground of his old friendship with Otto the Third, with whom he had been associated from boyhood. But, however highly he may have estimated his claims upon Saxon loyalty, Saxon loyalty was not to be had without conditions. The nobles and pre-

[1] *E.g.* by the Italian clerk who writes the *Rhythmus de Ottone et Heinrico* (Dümmler, *Anselm der Peripatetiker*, 80-82): "Bavaria triumphs. Bold Franconia serves. Swabia sees herself foiled, and bends her back. Lorraine does homage. The Thuringian is true. The quarrelsome Saxony hastes to submit."

[2] Giesebrecht, *K.Z.*, ii., pp. 170, 171.

lates of East Saxony had, upon the news of Otto's death, held a meeting at Frohse to consider their course of action. At that meeting many were in favour of Eckard, the Margrave of Meissen, a man who had distinguished himself greatly in the Italian and Slavonian wars, the brother-in-law of Duke Bernhard of Saxony, the stepfather of Gero of the East Mark. If a pure Saxon were to be chosen king, no one had a better claim than Eckard. But chiefly owing to the action of the Margrave Lothar, it was decided to take no definite step until a larger meeting, which was summoned for Werla; and before that gathering was held, Henry had been able to assure himself of the support of the two sisters of Otto the Third, who enjoyed the greatest influence with the people, and of many of the Saxon nobles. The meeting determined to support him on the ground of his hereditary right. But when, after his election, coronation, and unction at Mainz, the king made the customary journey through the empire, he found that the Saxons, who had not been present at his election, refused to receive him unconditionally. It was at Merseburg that Henry met the Saxon assembly, and the scene has been somewhat elaborately described to us.[1] Duke Bernhard first came forward, expounded the desires of the people, gave some account of the provisions of the Saxon law, and then asked Henry what promises he was prepared to make. The king replied in the following terms: "Saving the honour of the realm, I appear here in this royal dignity by your invitation and with your consent. I pledge myself not in any point to corrupt your law, but to fulfil it clemently in all respects while I live." Bernhard then took the

[1] Thietmar, v., cc. 16, 17; Gies., *K.Z.*, ii. 24, 593.

sacred lance, and, "in behalf of the whole assembly, loyally entrusted the care of the kingdom to him." In a free assembly the Saxons had asserted their right to entrust the government of their country to the king of their choice, and upon conditions fixed by themselves.

The candidature of Eckard, and the proceedings of the day of Merseburg, would have been enough to warn Henry that his position in Saxony was not so secure as had been that of his predecessors. And a month had not elapsed before an event occurred which must have strengthened this impression. As the sister of the king was being consecrated Abbess of Gandersheim, a riot broke out between the Bavarian attendants of the king and the Saxon peasants in the neighbourhood of Paderborn. A Saxon writer[1] tells us how the Bavarians with their "insatiable avarice, which they contrive to control at home, but to which they set no limits when abroad," were wasting the crops, when the Saxon farmers turned out and beat them off. A great fight arose, in which the Bavarians were worsted, and fled into the royal court. The brother of the king's chancellor was slain, and the Saxons, with their numbers now augmented, would have renewed the attack had it not been for the interposition of Duke Bernhard with a strong force.

This is a small incident, but it may serve to show the danger of bringing a Bavarian following into Saxony. Henry, at any rate, seems to have been fully alive to the necessity of conciliating that difficult people. He celebrates the anniversary of Otto the Third's death at Aix, and, after the manner of his predecessors, keeps his Easter with due solemnity at

[1] Thietmar, v. 19.

Quedlinburg. When he journeys south of the Alps he sends his queen to live in Saxony. In 1005 he holds a great synod of the Church at Dortmund, in 1019 he holds a synod of Saxon prelates at Goslar. In 1011 he gets a special land peace sworn in Saxony for five years. When he leaves for Italy he first carefully assures himself of the fidelity of the Saxon people. He commends himself, says the chronicler ornately, to the "golden faith of the strong-hearted Saxons."[1] And if his rule in Saxony was at times disturbed, it was disturbed by private feuds rather than by corporate race feeling. The Slavonic pressure on the east was throughout the reign too constant and severe to admit of much Saxon fighting in other quarters, and when the Saxon chronicler Thietmar sets himself down to write a character of Henry the Second, the first service which it occurs to him to attribute to the subject of his poem, is the rescue of the greater part of the kingdom from the cruel Slave.[2]

Under the first two Franconian emperors, Conrad II. and Henry III., there is singularly little evidence of anything like dissension between the four races. The emperors freely dispose of the southern duchies, without apparently exciting discontent,[3] and they command imperial levies from every quarter of Germany. It might have been expected that the royal hold over Saxony would be relaxed as soon as a non-Saxon dynasty came to the throne. But it must be remembered that Conrad the Second, the first king of the

[1] *Ann. Quedlinb.*, 1021. [2] Thietmar, v., c. 21.

[3] Waitz, *D. V. G.*, iii. 109, points out that no family for long held the ducal office in Bavaria or in Swabia, under the Franconian kings. In the Saxon period the family of Henry in Bavaria and the Rhenish Franconian house in Swabia were more durable.

Franconian house, was the great grandson of the daughter of Otto the Third, and that he, like his predecessor, confirmed the Saxon law upon his accession. Again, it should be remembered that throughout these two reigns, Saxony was in grave danger from the attacks of the Slaves. The cession of the March of Schlesvig to Cnut at the beginning of Conrad's reign was probably motived by the conviction, that, without Danish confederation, the north-east boundary could not be effectively protected.[1] And while Cnut makes the Pomeranians, the Ermlanders, and Samlanders tributary, his ally Conrad is struggling with the newly formed power of the Poles.

Twice during this reign, in 1028 and again in 1030, we hear of great Polish raids into Saxony. On the last occasion 10,000 Saxons, including the Bishop of Brandenburg, are carried off into captivity. Nor are these troubles finally allayed either by the vigorous measures of Conrad, or by the ambitious Bohemian campaigns of Henry the Third, or by the great defeat of the Wends near Hadely in 1043. In 1056 a Saxon army was completely annihilated by the Wends, with the loss of William, Margrave of the Northern March, and the severity of the disaster is attested by the fact that it is mentioned in almost all the contemporary sources.[2] The constant Slavonic menace, the close identification of Henry III. with the Margrave of Meissen, the free hand allowed to the Saxon duke, may have combined to reconcile the northern people to the rule of the second Franconian.

[1] This victory was obtained by King Magnus of Denmark and Norway, in conjunction with a Saxon force under Ordulf, son of Duke Bernhard.

[2] Lambert Hersf., 1056, "Willihelmum marchionem et Diotericum comitem cum infinita multitudine Saxonici exercitus occubuisse"; cf. Gies., *K.Z.*, ii. 528, 682.

There was, however, one factor in the Saxon situation with which every king of Germany had seriously to reckon. This factor was the house of Billung, which had held the Saxon duchy since the time of Otto the Great.[1] The story goes that a certain Hermann Billunger, of poor and humble origin, made himself conspicuous for zeal and ability at the court of Otto, and was rewarded with the charge of the Saxon duchy, when the king went on his second Italian journey. The office, which thus came to the son of a peasant farmer, though nominally a duchy, was in reality nothing more than the administration of the marches against the Northern Slaves and the Danes. The Saxon duke never attained to the position of a duke of Bavaria or of Swabia. He did not summon the Saxon princes to his court, or decide important cases affecting their interests. We have no evidence that he could command their military assistance against the Slaves, or that it was on the duke's summons and under the duke's leadership that the Saxons followed the imperial expeditions. The bishops and counts and margraves of Saxony are independent of the duke, and hold only of the king. Yet, if the Billung dukes never rose to the position which had been enjoyed by the Liudolfingers in Saxony, if they were never leaders of the whole Saxon nation, yet their title and their wealth secured them a certain influence. Their lands were spread over all three divisions of Saxony —Eastphalia, Engria, Westphalia. The Wends paid them tribute, the Slavonic princes did them homage;

[1] Giesebrecht, *K.Z.*, i. 437, 438; Waitz, *D.V.G.*, vii. 102, 109, 138, 159; Steindorff, *De ducatus qui Billingorum dicitur in Saxonia progressu*; Wintzer, *De Billingorum inter Saxoniam ducatu*; Weiland, *Das sächsische Herzogthum unter Lothar und Heinrich der Löwe.*

they possessed more than twenty counties. They exacted an occasional tribute from Friesland.[1]

These dukes steadily rose in power. Hermann's successor, Bernhard, represents the Saxon race at Merseburg, and exacts from Henry II. the confirmation of the Saxon law. Bernhard's brother Ordulf marries a sister of the King of Denmark and Norway, and helps to win the great victory of Hadely over the Wends in 1043.[2] The Billung family comes to represent the strivings of the Saxon race to maintain their old privileges against the monarchy, and to defend their borders against the heathen Slave. It is a family, however, which in the eleventh century has little claim to political virtue or talent. It sacrifices its conquests over the Slaves by imposing a grinding tribute upon a scarce vanquished people. It watches with jealousy the rise of Bremen and of Hamburg, the two sees, whose mission it was to spread German Christianity over the North. Archbishop Unwan of Bremen has to surround his city, then beginning to be a great commercial centre, with a wall for fear of Duke Bernhard. Bishop Meinwerc of Paderborn is menaced by his treacherous neighbour, Duke Bernhard's brother. Interest in the empire as a whole these Saxon dukes had none. If the emperor might help them in warding off the Slave, he might equally hinder them in promoting the interests of that noble and very episcopal family, the Immedingi, in showering fresh privileges upon the already too powerful prelates

[1] Wintzer shows that the main seat of their power was in Nordalbingia. They had several counties in the dioceses of Bremen and Verden Hildesheim; Hermann seems to have been advocate of Bremen and Hamburg. The advocacies of Verden and Minden also came to the House.

[2] Adam. Brem., ii. 67.

of Bremen and of Hamburg. A flicker of revolt bursts out in the days of Henry II. Possibly irritated by Henry's alliance with the Wiltzes,[1] possibly by his friendship with their rivals the Immedingi, possibly by his failure to take the field against revolting Abodrites and Wagrians, Thietmar attacks the bishops, and Duke Bernhard raises the Westphalians against the king. It is but a flicker, and it is extinguished by the mediation of Unwan of Bremen; but a Saxon duke has been besieged in a fortress by the emperor, and he has won the support of a large portion of his countrymen in his revolt.

In the days of Henry III. the old quarrel bursts into a fresh flame. The Saxon duke was now confronted with an Archbishop of Bremen, Adalbert, whose talents and ambition seemed likely seriously to threaten the position of the Saxon nobility. The duke regarded the archbishop as a spy sent into these regions to report the weak places of the land to foreigners and to the emperor. He affirmed that so long as he or any one of his sons lived, the bishop should never have a good day in his bishopric. And as Bernhard threatened, Adalbert had more and more recourse to the favour of the imperial court. It seemed likely that Saxony would be riven into two contending camps. On the one side, Adalbert, the ambitious clerical innovator, who shocks the simple Saxons with elaborate new-fangled ritual, and who alarms the ambitious ones by absorbing counties and planning a patriarchate of the North; on the other hand, Duke Bernhard and his brother Thietmar, who represent the old-fashioned

[1] The Wiltzes or Luticii were the Slaves on the right bank of the middle Elbe. The Abodrites and Wagrians were further north, and occupied the site of Lauenburg and Mecklenburg (Lavisse, *La Marche de Brandenbourg sous la dynastie Ascanienne*).

Saxon nobility and the prejudices of the old-fashioned Saxon freemen, who hate the archbishop, Saxon though he be, and suspect the Franconian Emperor.

It never came to open war during Henry the Third's reign, but two incidents occurred, which reveal the passions which played beneath the surface. The emperor, on his return from Italy in 1047, was invited by the archbishop to visit Bremen, and the pretext of the visit, which was in reality undertaken to test the fidelity of the dukes, was suggested to be either the inspection of a royal estate at Lesum or a conference with the King of the Danes. The emperor was sumptuously received, and he repaid the splendour of his reception by conferring upon the archbishop the reversion of the county of Frisia, a gift which must have been peculiarly irritating to the Saxon nobility of the neighbourhood, and which was perhaps intended either to overawe or to evoke their opposition. The emperor then moved on to his estate at Lesum, and here the report goes that Thietmar, the brother of Duke Bernhard, laid a plot against his life which was circumvented by the archbishop. Thietmar, at any rate, was tried for the offence, and, on refusing to purge himself by combat, was slain by one of the emperor's servants, by name Arnald. A few days afterwards Arnald was caught by the son of Thietmar, and hanged between two dogs, an offence which Henry repaid by condemning that vengeful son of Thietmar to perpetual exile. Thus, between the death of Otto III. and the death of Henry III., one member of the Billunger House had been besieged, one had been killed, and one exiled through opposition to the emperor.

The stern rule of Henry III., his frequent and protracted residences in Goslar, his castles in the Harz and

Thuringian mountains, his support of Adalbert of Bremen succeeded in arousing an amount of opposition in Saxony, which was probably only kept under by the fear of the Wiltzes. No sooner was the king dead than the Saxon princes held frequent meetings with a view to diverting the succession from a son who was expected to inherit the temper and traditions of his father. A candidate soon presented himself. There was a certain Otto, son of a Wendish mother, half brother to William, the late margrave of the Northmarch, who had just fallen in the great fight of 1056 against the Slaves. Otto had from his boyhood lived in Bohemia, but, hearing of his brother's death, he crossed the Saxon border to claim his inheritance. He was received with open arms by the Saxon conspirators, and urged to be more ambitious, to claim the kingdom as well as the march. Otto was ready for anything, and a plot was laid against the life of the youthful king. But Saxony was not yet prepared to rise. The empress was warned of the danger to the public peace, and she summoned all the Saxon princes to meet her and her son in council at Merseburg. As Otto and his followers were travelling to court, they were set upon by two of the king's cousins. Otto was killed in the broil, and the Saxons, deprived of their leader, attempted nothing further against the king.

It was clear, however, that the monarchy would sooner or later be brought into conflict with the Saxon race. The Billungs did not easily forget animosities, and the young duke, Magnus, whose main energies during the minority of Henry IV. were directed towards despoiling the church of Bremen, was soon ready to give more direct proofs of his hostility towards the Franconian house.

There was a certain Saxon, "noble and prudent and

a great warrior," by name Otto of Nordheim, a man of an ancient family, of wide-spread possessions, but with many private enemies among the Saxon nobility. He seems to have obtained great influence at the imperial court, for in 1061 the empress gave him the duchy of Bavaria, a reward, says Lambert, for his industry and helpfulness. From that moment Otto became one of the most powerful persons in the kingdom. Possibly owing to his disappointment at not obtaining the duchy of Swabia, he determined to strike at the influence of the queen regent, and, with Anno of Cologne, he was a party to the abduction of the youthful king in 1062. And then for a time he seems to have been joint ruler of Germany with Anno of Cologne and Adalbert of Bremen. But in 1070 Henry, who was now twenty years of age, and who may have wished to free himself from so powerful a counsellor, took a step which alienated Otto, and lit the flames of a great Saxon war. A freeman of ill repute, Egino by name, accused the Duke of Bavaria of a plot to murder the king; he declared that he himself had been commissioned to do the deed, and he exhibited the sword by which the deed was to be done. Henry may well have had other reasons to suspect the loyalty of Otto. At any rate he summoned Otto to a court at Mainz, and, on his denying the charge, the princes gave him six weeks' respite, at the end of which period he was ordered to meet his accuser at Goslar, and to decide the matter by battle. Otto refused to fight with a man of soiled reputation, but he was prepared, if a safe conduct could be assured him, to abide by the decision of the princes of the kingdom. The king replied that he should have peace on his way to the court, but as to a safe conduct upon his return, that would depend upon the result of the

trial. Otto's friends counselled abstention, and the duke rode back to his estates. A court of Saxon princes declared him guilty of treason, and deprived him of the Bavarian duchy.[1]

So far the quarrel had not gone beyond the limits of a private broil. The king seems to have won over the Saxon nobility, and Otto of Nordheim could only gather a company around him by the promise of booty. The loyalty of Otto's relations and friends was at any rate provisionally secured by the exaction of hostages and of oaths. The house of Billung had not yet been enlisted, and there is no sign of Otto's commanding the sympathies of the Saxon peasants. A temperate use of the advantages secured to him by the decision of the Saxon princes at Goslar might have enabled Henry to dissipate the suspicions aroused by his father, and to avert further calamity. But the sentence at Goslar was the signal for a wild outburst of rapine and violence on the part of the king's adherents, which Henry did everything to promote. The estates of the condemned man were ravaged, his farm labourers tortured or slain, his castles besieged, his churches pulled down, and the houses upon the property of his wealthy wife, Richinza of Werla, stripped of their possessions. Barbarians themselves, says Lambert, could have done nothing worse.

[1] Henry was only acting according to usage in submitting the case of Otto, who was a Saxon by birth and lived Saxon law, to an assembly of Saxon princes. It does not necessarily follow that Lambert is wrong in attributing private hostility against Otto to the Saxons (Riezler, *Geschichte Bayerns*, i., p. 484). The Bavarian Chronicler of Altaich believes in Otto's guilt, Lambert and Bruno in his innocence. Helmold thinks he was condemned "quia Saxo erat." Bertold the Swabian is undecided. Bernold the Swabian thinks him a rebel. For an account of the sources for the history of the Saxon revolt, cf. Giesebrecht, *K.Z.*, iii., pp. 1033-86; Richter, *Annalen*, iii. 2.

The cruelties committed by Henry and his men upon the estates of Otto in Saxony were retaliated by the ravages of Otto's band of armed brigands upon the imperial lands in Thuringia. And after a victory over the Thuringians, who, in virtue of a land peace sworn some years before, attempted to put a stop to the outrages of the invaders, Otto retreated into northern Saxony, where he lived partly on rapine and partly on the possessions of his friend and devoted defender, Duke Magnus.

It would perhaps have been possible, though difficult, to conciliate Otto at this point, for the country was disinclined for civil war; but Henry threw a large chance away when he made a present of Otto's Bavarian duchy to Welf the son of Azzo, Otto's own son-in-law. Otto was now driven to desperation; his property in Saxony was destroyed; his daughter was perfidiously repudiated by the son-in-law who had obtained his duchy. He determined to seize the first opportunity to settle his account with Henry in a pitched fight, fortified a hill-top in the Habichtswalde, a few miles west of Cassel, and waited for the king. Henry hurried back to Saxony from Bavaria, where he had been introducing the new duke, and collected a hasty levy of Saxon, Thuringian, and Hessian troops to oppose the rebel. But the impending battle was averted by the counsels of Count Eberhard. Both sides agreed to a truce, and Otto consented to come to Cologne at Easter, and to abide by the judgment of the princes, under an understanding that his fault should be forgiven, and that he should obtain restitution of all that he had lost by right of war. At Whitsuntide, in the Saxon town of Halberstadt, Otto's surrender was finally made. He and his friend Magnus, and several of the more prominent rebels, were

entrusted to the safe keeping of certain members of the king's party. Otto's outlawry was withdrawn, and his allods restored. It was said afterwards that the king passed sentence without discussion, but, whether this be so or not, his decision awoke no immediate sign of discontent in Saxony. Henry for the moment had triumphed over his two most powerful foes.

The imprisonment of the Saxon duke might in itself have been sufficient to cause a revolt. But it was only part of a policy, which is said to have been suggested to Henry by the ambitious counsellor of his youth, and the sworn foe of the Billung House, Adalbert of Bremen. This policy was nothing more nor less than the construction of a despotism in Saxony. Goslar, the favourite residence of Henry III., was to become the permanent home of the German king. The hill-tops of Saxony and Thuringia were already crowned with fortresses manned by Swabian garrisons, who could hold the surrounding populace in subjection, and levy a regular tribute for the king's needs. When the power of the ducal family had been destroyed, and its ancient fortress of Luneburg on the Lutician border had been converted into a Swabian stronghold, the king might proceed to strike down the other nobles in the land, to deprive the Saxon cultivators of their liberty, and the Saxon race of that traditional independence, which they had enjoyed under previous kings, and which was symbolized to them by the Saxon law. We cannot be certain that Henry, who was young and passionate and licentious, ever thought out a scheme to such far issues, but there was enough in the steps which he actually took to excite deep hostility and alarm among the Saxon populace. During the minority the royal domain in Saxony had been either profligately squandered by

the king's advisers or usurped by the nobility. It is possible, too, that the Saxon nobles resented the notion that the property of the Ottonian house should pass into the hands of the new Franconian dynasty. But however this may be, the coming of age of the young king was followed by revindications of the fisc. The Saxons complained that they were deprived of their patrimonies by force or calumny, and the inquisitorial procedure of the king's agents was a clear violation of Saxon custom.

This was not all. Henry III. had made Goslar his capital. Henry IV. unquestionably intended to make Saxony the military and financial centre of the monarchy. Whereas the fiscal manors in Franconia were only required to render eighty-five services, and those of Bavaria thirty-six, the twenty manors of Saxony are charged with a service of 405 days a year, and the Saxon services were individually far heavier than those which were required of other parts of Germany.[1] As early as 1066 the king's chief administrator and architect, Benno of Osnabruck, had begun the work of castle building, and the Saxons observed with alarm that the new fortresses were not rising upon the eastern border, but in the very heart of the land. The king's court was filled with Swabians, many of them of low birth, all of them detestable to the Saxon nobility. The garrisons of the fortresses were Swabian. The fortresses were built by the forced labour of the peasantry, and the South German adventurers sallied out from them to ravage and spoil the surrounding country, and often carried off whole flocks of sheep under the pretext that they were levying tithe. Respectable farmers were put to do slaves' work; wives

[1] Weiland, *Constitutiones et Acta Publica*, i., pp. 646-9 [*LL. Sectio*, iv.].

and daughters were violated; tribute was levied from wood, and meadow, and stream; swine were prevented from entering the common forests; and all appeals to the king were met with the reply that by withholding tithe the peasantry was violating ecclesiastical law, and that the honour of God must be avenged. The air became thick with ugly rumours. The king had said that all the Saxons were slaves; he had even sent messages to some who refused to meet the demands of his fisc, saying that slaves they were and as slaves they must serve. He had persecuted one wealthy Saxon for his wealth; he had said of a free Saxon noble that he was his servant; he had made a secret pact with the Danes and with his relative Udo of the Northmarch; and when he announced a campaign against Poland, it was asserted that he was really collecting an army to subdue Saxony, to annihilate the Saxon population, and to put Swabians in their place.

The Saxon nobles and prelates had their own grievances. They were menaced by the fisc. Their leader, Magnus, was in prison, and the fortress of his family was in the king's hands. They detested the Swabian courtiers by whom the king was surrounded. Summoned on June 29th, 1073, to a council at Goslar, they were kept waiting for a whole day without an audience, and then contemptuously dismissed by a "parasite." On the same night, without waiting to dine, the princes met in a church at Goslar, and determined to consult with the whole Saxon nation about the best means of preserving their liberties. A gigantic meeting was held not long after in the open air at Wormsleben, between the middle Unstrut and the lower Saale. It was addressed by Otto of Bavaria, by Hermann Billung, by Werner, Archbishop of Magdeburg,

by Burchard, Bishop of Halberstadt, and by two free Saxons, one of whom, Frederick de Berg, had been claimed by the king as an unfree servant, and the other, William König, had been threatened with the loss of his patrimony. And after each had expounded his own injuries, every man in the assembly swore that he would defend the civil liberty of the race, and prevent the land from being plundered as long as life remained to him.

According to the account of Lambert, the number of the insurgents exceeded 60,000. The leaders included the Archbishop of Magdeburg, the Bishops of Halberstadt, Hildesheim, Merseburg, Minden, Paderborn, Münster, and Meissen; the Duke of Bavaria; three margraves; one Count Palatine and five counts. So general was the enthusiasm, and so angry were the passions of the race, that the Archbishop of Bremen and the Bishops of Zeitz and Osnabruck, who refused to join the rebels, were forced to flee the country and take refuge with the king. Nor was the temper of the people otherwise in Thuringia. The Thuringians enthusiastically determined to throw in their lot with the Saxons, and they sent to the powerful abbots of Hersfeld and Fulda to demand their assistance.

It is, however, a remarkable fact that, in spite of the popular passions aroused, the Saxon leaders were most averse to open hostilities. If the king would defer the expedition against the Poles, which they could ill undertake, with the active hostility of Wiltzes always on their hands; if he would order the castles to be destroyed, would satisfy the Saxon nobles whose property he had confiscated without discussion; if he would visit other parts of his kingdom; if he would reject base blood from his council, and manage the business of his kingdom in

conjunction with the princes, to whom such matters belonged, they were ready to lay down their arms.

The king was inclined to listen to these not unreasonable requests,[1] but his counsellors did not believe in the seriousness of the Saxons, and their envoys were dismissed with a light and contemptuous reply. Entreaty had been exhausted. It was time to try menace. The Saxons moved down upon the royal town of Goslar, and pitched their camp within sight of the walls, and had it not been for the calming presence of the Bishop of Halberstadt, who seems to have exercised a wonderful influence over the devotional Saxon peasantry, a rush would have been made for Henry's person. Henry was without an army, and there was nothing for it but to flee. He escaped with the royal insignia, and with as much treasure as he could carry, to his hill fortress and favourite home upon the Harzburg, where he had built him a palace and a church, and where he had buried his brother and his eldest son two years before. Suddenly, as he was sitting at table, news came that the insurgent army was close at hand. The king aimed at gaining time by negotiation, and he sent ambassadors to suggest that the whole case should be laid before the princes of the empire. But the Saxons were suspicious of delay, and were not inclined to submit to a tribunal mainly composed of Bavarians and Swabians and Franks, who would probably misunderstand the causes of their action.[2] The leaders replied that their case was peculiar,

[1] According to Bruno, c. 27, these requests were made after the Saxon army came in sight of Goslar. The king was at the Harzburg.

[2] According to Bruno the Saxons had received a secret embassy from the Swabians, and had made a compact with them that neither people should help the king to oppress the other (c. 17). The same author states that the Saxons in 1073 received much sympathy from the Swabians and Eastern Franks, who knew that Henry was contemplating the same thing against them (c. 30).

that other nations had not experienced the burden which the continuous residence of the royal court had laid upon them. If their injuries had been shared by the other princes of the realm, they would have been willing to abide by their decision. As it was, Henry must settle with them alone. If he would destroy his fortresses, restore the property which he had confiscated, and swear to respect the immemorial privileges of the race, the Saxons would trust his word. Otherwise they would defend their liberties to the death. It was in vain that the king attempted to extract a less exacting answer, and as the Saxons closed round the Harzburg he saw that his only chance of victory lay in flight. One August night he and his chief counsellors escaped into the Thuringian forest, and after five days' march came to Hersfeld, the place where the army for the Polish expedition had been ordered to collect.

The king's flight was a turning point. The Saxons felt that so long as the king remained on Saxon ground their grievances might be settled swiftly. But now the area of the contest was likely to be indefinitely widened. The king would appeal to the Rhenish bishops and to the South German princes, and their judgment would pronounce the Saxons guilty of rebellion. A period ensued of mingled fighting and negotiation. The Saxons, since they judged it unwise to pursue the king, set themselves to storm his Saxon castles. The castle of Luneburg, a fortress on the Lutician border which had belonged to Duke Otto, but which was then held by a picked royalist garrison, was surrounded, the garrison compelled to surrender, and the release of Magnus extorted as the price of their safety. The Thuringians eagerly joined in this war of sieges, which they conducted with singular clemency, being anxious to prove that they

were animated by no personal hostility to the king. And while the peasantry were engaged in expelling the Swabian garrisons, their leaders were considering how best to influence the opinion, and to satisfy the scruples of the non-Saxon princes. They came to a resolution of the greatest importance. So far they had attempted to get Henry to recognize the quasi-independence of the Saxon kingdom, as it had been recognized by Henry II. and by Conrad II. Now they determined to procure, if possible, Henry's deposition. At a conference held in the monastery of Corvey with the Archbishop of Mainz, the king's emissary, they suggested that the king was guilty of offences against morality, which rendered him obnoxious to the penalties of ecclesiastical law, and unworthy not only to be a king, but to wear the knight's belt, or to mix in any society at all.

These charges were probably false, but it is significant that they should have been made. So long as the king had merely opposed the Saxon peasantry, so long as the motive for the rebellion was understood to be merely a certain number of acts of violence committed in Saxony, and a neglect of the liberties guaranteed by their law to the Saxon people, the Saxons could not expect to enlist much support from the other German races. If they asserted that the Court of Goslar beggared the farmers on the Harz Mountains, the princes of the Rhine and South Germany might reflect that what was the Saxon loss was their gain; if they asserted that the king clearly intended to make himself tyrant in Saxony, and to levy a big revenue through the machinery of his Swabian garrisons, the other princes of Germany might reflect that fewer demands might be made upon their own lands. Nor would a mere catalogue of tyrannical deeds have been considered

sufficient to secure the deposition of an anointed king. For an act so tremendous, it was necessary to invoke the most tremendous sanction, the sanction of the ecclesiastical laws, which were alone acknowledged through the length and breadth of the German lands, laws to which a Rhenish bishop and a Bavarian noble would bow as readily as a Saxon peasant. By insisting upon the moral offences of Henry, the Saxon princes implicitly acknowledge the fact that a king cannot be deposed for misgovernment, or rather that misgovernment in Saxony will not depose a German king.

On October 20, the Saxon leaders, accompanied by 14,000 armed men, repeated these arguments at Gerstungen before Rudolf of Swabia and six other royal ambassadors. Their eloquence and sincerity produced so great an effect that the princes promised to secure an indemnity for the insurgents, and a restoration of their liberties, provided that they would make a formal submission to the king; and it is even stated by one authority that a secret arrangement was entered into for the deposition of Henry and the election of another king, but that the publication of the scheme was deferred until the other princes of the empire had been consulted on the point.

Again the Saxons were destined to disappointment. The Archbishop of Mainz summoned a meeting of princes to deliberate upon the terms of a settlement, and the insurgents used all their arts to induce the princes of the Rhine to nominate a new king, but Henry threw himself into Worms, which received him with every honour. The princes were timid, and Henry's eloquence at a meeting held in Oppenheim prevailed over the Saxon pleas. All thought of a new election

seems to have passed away. But meanwhile the Saxons were pressing the siege of the Swabian fortresses, and it became clear to Henry that if he were not basely to abandon his own men, there was nothing for it but war. In a cold January, 1074, he collected an army at Hersfeld, and found the way into Thuringia barred by a force of 40,000 Saxons. The situation was an anxious one for the king. The Archbishops of Mainz and Cologne, the Bishops of Strassburg and of Worms, the Dukes of Bavaria, Swabia, Lorraine, the Moselle and Carinthia, the knights of the Abbots of Fulda and of Hersfeld, had protested that they would not take up arms against an innocent and Christian people of their own kin, who, even if they had done wrongly, had acted with much justification. The royal summons to arms had been scantily attended to, and there was great difficulty in provisioning the army in the hard weather. On the other hand, the Saxons were reported to be in such force that they had dismissed eleven thousand of their number. With an unpopular cause, and an army about half as large as that of his assailants, Henry was forced to submit to the advice of his princes, and to open negotiations with the insurgents. Both armies were short of provisions, and the Saxon leaders, always cautious, possibly distrusting their peasant levies, probably disillusioned of their hopes of general support by the fiasco of Oppenheim, were inclined to negotiate. This time Henry accepted the Saxon articles. It was announced that the garrisons were to evacuate the castles as soon as they had consumed their supplies, and the castles were then to be left for the Saxons to deal with.

Otto was to be restored to his duchy of Bavaria; a general indemnity was to be given to the insurgents; the ancient laws and liberties of the Saxons were to be

guaranteed; nothing was to be done in Saxony without the advice of Saxons, and no man of non-Saxon race was to be admitted into the king's council. The king was to go circuit through Germany, and not spend all his time inertly at Goslar; he was to do justice to churches and monasteries, to orphans and widows, and to all who suffered calumny. If the king went back from any one of these articles, the Saxons were bound by oath to take up arms, and, in conjunction with the other princes of the empire, to depose him from the throne as guilty of perjury. On these terms peace was arranged, and on February 2nd the whole Saxon army filed by to look upon the face of the king, and the king accompanied the Saxons back to Goslar.

It was a great diplomatic victory for Henry, for the real danger, which faced him, lay in the solidarity of the Saxon race and in the prospect of an effective alliance between the northern insurgents and the South German princes, Rudolf, Bertold, and Welf. In 1073 a royal *ministerialis* professed in open court that he had been suborned by his master to slay the two Swabian dukes, Rudolf and Bertold. The dukes threatened to cast off their allegiance, unless Henry could purge himself of so foul a charge; but Regenger died suddenly in January, 1074, and the removal of the accuser was regarded as a divine declaration of his perfidy. Still the seeds of mistrust had been sown, and they were watered by ambition, for the Saxons offered Rudolf the German crown. An understanding came to pass between the southern dukes and the insurgents, for the dukes wished to guide the course of events by the lamp of their own private interests. Now, however, Henry had forced the Saxons to make a separate peace. The Swabians considered that they had been left in the lurch; the

peasantry, that the nobles had betrayed them. By timely concession Henry had doubly divided his foes.

But the king was a proud man, and it seemed ignominious to capitulate the peasants. The young soldiers of the Harzburg garrison, who had not only successfully defended their fortresses, but had inflicted great loss upon their assailants, were received with all honour by Henry at Goslar, and, pointing to the tombs of their Saxon victims which lined the road from Goslar to the Harzburg, they cried out against the shame of the peace. Once more—this time before a council of Saxon and Thuringian nobles, held in the palace of Goslar—the king pleaded for his castles, but the sound of Saxon armed men in the hall showed him that the time for haggling was gone by. In a moment of physical peril he consented to all. Then, mortified with his defeat, he retired to spend his Lent at Worms.

Three days after the king had retired, some of Henry's men, who had been sent to pull down the battlements of the Harzburg, invited the neighbouring peasants to help them in the work of demolition. The peasants went beyond their orders. They pulled down the walls, destroyed the church, plundered its treasures, broke up the altar, and exhumed the bodies of the king's brother and son, so that Henry might never again restore the castle. It was a wild deed of passion, which shocked the religious feeling of the people. The Saxon princes had nothing to do with the outbreak; they offered to assert their innocence in any way which the other princes might demand; to rebuild the church at their own expense; to give as much gold and silver and land as the king might demand in satisfaction of the injury; to submit themselves barefooted to the king's justice. But Henry refused to receive their

messenger. They had once appealed to the laws ecclesiastical against Henry; Henry now had the ecclesiastical law of them. And he was determined to insist upon his advantage. He sent to the apostolic see to obtain papal thunder against the men who had burnt churches, broken altars, violated tombs; he bound the princes of Germany by an oath not to assist the Saxons who had done this thing, or to receive their envoys without his leave, or even to intercede with him for them, until this stain had been wiped away and the princes of Germany swore to him that oath. In a moment of passion he ordered all the castles and fortresses of Saxony to be levelled to the ground.

Saxony and Thuringia now stood alone. The separate treaty which the Saxon leader had made with Henry alienated the Swabian nobles, who had not been consulted as to the terms of the peace. The outrages of the Harzburg threw away all the sympathy which had been felt by non-Saxon ecclesiastics in the Saxon cause. According to Bruno, only one-third of the Saxon nation still persevered in the contest. The Westphalians and the men of Meissen had accepted the king's gold, and all the bishops save four embraced the royalist cause. Saxony must make her peace with the Church if she is to make her peace with the empire. Orders were sent all through the land that the population was to clothe itself in woollen garments, to abstain from meat and drink on stated days, to spend money on the poor, each household according to its means; to visit the churches barefooted; and to pray that, where all human help had failed, God's hand might be extended to rescue the race. For more than two months the rebellious portion of Saxony and Thuringia became one great penitentiary. Again and again Saxon envoys were sent

to the king and to the princes, urging that the Saxon land should not be condemned unheard; and yet, while every resource of diplomacy and superstition was employed, no military preparations were omitted.

These precautions were necessary, for the king's position had been enormously strengthened by the event upon the Harzburg. Henry could now claim that the Saxons had broken the peace, that they had violated all sacred and social principles, and added the crimes of impiety and perfidy to that of rebellion. When in June his army collected at Bredingen, it was the unanimous opinion that a force so large, so strong, and so well equipped had never been gathered together by any king in Germany.[1]

The two armies were about equal in number and in military equipment, but the Saxons suffered from the lack of a single leader, and they carelessly allowed themselves to be surprised. As the Swabian and Bavarian troops came on, the Saxon horsemen charged down on them in a tumultuous mass, and at first the force of their famous swordsmanship carried all before it. Ernest, the Bavarian margrave, the hero of many a fight on the Hungarian border, fell mortally wounded, and the battle would have been rendered notable only by the number of illustrious Swabians and Bavarians who were slain in the first onset. The Swabians and Bavarians held their ground stoutly for three hours, but at last their courage gave, and they turned to flee. Just at the critical moment two Franconian divisions appeared upon opposite sides of the field, and administered flank attacks upon the Saxon swordsmen. The

[1] Bruno asserts that Henry IV. had appealed for help to the Luticii, the Danes, to Philip of France, William of England, and William of Poitou (c. 36).

Swabians and Bavarians rallied, and then the Dukes of Bohemia and Lorraine, who, for some reason, had hitherto taken no part in the conflict, launched their horsemen on the melée. Then the Saxons finally gave way, and, despite all that Otto could do, the flight became a rout, the rout a massacre. The royalist swordsmen slew the footmen in the Saxon camp like sheep, and many only escaped to be drowned in the waters of the Unstrut. The fighting had begun at mid-day, and the work of slaughter was only terminated by the darkness of night.

It was the first occasion since the end of the Franco-Saxon wars of the eighth century on which any big encounter between the different German races had taken place. The Saxons and Bohemians were indeed old foemen, and Saxon and Swabian swords had crossed in the guerilla warfare of the previous years. There had been a little Saxon campaigning in Bavaria during the reign of Henry the Fowler and Otto I., a little fighting in Franconia, but in the main the northern and southern halves of Germany had kept apart. The Bavarians were busily engaged on the Hungarian border; the Saxons had enough to do to defend their lands from the Slaves. The great ecclesiastical properties of Fulda and Hersfeld, the wild tracts of the Thuringian forest, more plentiful of pigs than of men, the thick wedge of Slavonic settlers in the new-carven diocese of Bamberg, tended to divide the lands of the North and South German peoples. Road communication was scarce as yet, and easily blocked in time of war, and there was almost as little intermarriage between the Saxon and the non-Saxon in the eleventh century, as there was in the days when Einhard wrote of the signal purity of the Saxon blood.

The current of southern trade passed either up the Main or Neckar to the Rhine, or else down the Vistula or along Russian and Polish land routes to the great Slavonic trading town of Wöllin. But as yet the current was neither wide nor deep, and the Saxon towns had little share of it. Many crusades had to be undertaken both against Saracens in the Mediterranean and against Slaves in the Baltic, before the current should grow into an ample stream, before the commercial intercourse between north and south should be full, direct, and vivifying.

But although the Saxon race was more or less isolated, although the Saxon nobles claimed to be alone consulted by the king upon Saxon affairs, and protested against the Swabian officials who manned the court at Goslar, there is no sign either of any marked racial animosity on the part of Saxons against the Germans of the south, or on the part of the Germans of the south against the Saxons. One of the Saxon historians of the war, Bruno, is careful to point out that the Swabians and the Franconians expected to receive from Henry the same treatment which he had meted out to the Saxons; that before the war had begun the Swabians had sent an embassy to the Saxons, with the result that an alliance was made between the two races for mutual defence against the king; that in accordance with some such understanding the Saxon nobles offered the crown to Rudolf of Swabia, and would have elected him straight off, if he had not insisted upon first consulting the princes of the empire; and that the alliance with Rudolph only broke down when the Saxons injudiciously made peace with the king without consulting their Swabian allies. The Saxon historians of the war are clearly anxious to assert that the cause of the Saxons

was the cause of all the other German races as well, and this, within certain limits, was the position actually taken up by the Saxon leaders. While they contended for a Saxon settlement for their specifically Saxon grievances, they were both anxious to conciliate the good opinion of the other German princes, and in other matters to abide by their judgment. They never dreamed of breaking off from the empire; they were willing to accept any king whom the princes might elect, so long as Henry might be deposed; they were anxious in every way possible to make their conduct seem intelligible, just, consistent, to the rest of Germany. When the Archbishop of Trèves was preaching before the king on Easter Sunday in the Cathedral of Mainz, a Saxon envoy came up to the pulpit and handed him a letter, which he desired should be read before the whole people. The king forbade the letter to be read, but the envoy spoke out the substance of it briefly to the congregation. It was a prayer in the name of the whole people of Saxony, that the country should not be invaded before it had been convicted of crime.[1]

Nor can it be said that there was any strong feeling against the Saxons manifested by the South German races. It is true that the Swabian garrisons treated the Saxon peasantry with brutal contempt, and that there was a general impression abroad that they were a sluggish, unwarlike, patient people. It is also true that a most astonishing degree of ignorance seems to have prevailed as to the character of the Saxon armies, which were assumed at the outset to be completely deficient in cavalry. On the other hand, the sympathy with Saxon grievances seems to have been pretty widely diffused, and there was remarkably little reluctance on

[1] Bruno, *De Bello Saxonico*, c. 44.

the part of the South German princes to consider the proposal of the Saxon nobility to substitute a new king for Henry. Nor was the victory of the Homburg, complete as it was with every form of brutality, either the sign or the cause of any deep-seated racial antagonism. The slaughter of peasants by nobles, exasperated by a long and stubborn resistance, might have happened in any local feud. And the slaughter was followed by an almost instantaneous revulsion of feeling. It was felt that while the Saxon leaders had escaped almost to a man, a number of distinguished nobles upon the royalist side had perished, and an innocent and ignorant peasantry had been barbarously massacred. There was the greatest reluctance to continue the war, and the Archbishop of Mainz was obliged, in order to divert wholesale desertion, to excommunicate the Thuringians for non-payment of tithe, and thus to supply the campaign with a sacred motive. The Dukes of Bavaria and Swabia and Carinthia felt that they had lost heavily in a struggle in which they had little personal interest, and when they were next summoned to the host they refused to appear.[1] Indeed Henry, in spite of his victory, was so little certain of the princes that he attempted a desperate attack upon Saxony from the March of Meissen, in the hopes of reducing the country, before the Saxons should have time to submit their grievances to a council of the German nobility.

The princes who conducted the negotiations exacted an unqualified submission, but they pledged themselves upon their personal honour that the Saxons should

[1] According to Bruno, c. 54, "Berchtoldus et Rudolfus duces postquam a priori sunt praelio reversi, divina pietate compuncti, quadragesimas publice jejunaverunt et amplius se pro rege contra Saxonum innocentiam non esse pugnaturos fideliter Deo voverunt."

suffer no loss of life or honour or of person, and it was said that the king swore to observe the conditions imposed by the mediators, who had won for him this bloodless victory. The Saxon leaders accepted the terms. They were to be imprisoned for a few days, and it was understood that the king had sworn that at the beginning of November they should be dismissed in peace and with the royal pardon. On a wide plain between the towns of Creussen and Kindelbrücken the king's army was drawn up to witness the submission of the conquered race. An open lane was left between the serried ranks of the royalist force, and down this the princes of Saxony and Thuringia, and all the freemen of the Saxon and Thuringian nations, who were in any degree eminent for birth or wealth, were solemnly led, disarmed and with bared feet, to place their surrender in the king's hands. Henry then committed the Saxon leaders to prison, and distributed their benefices to the men at arms who had best served him in the Saxon war. If, as Lambert says, he had sworn to respect the promises of his mediators, then this was a breach of his oath.

When the second Saxon war broke out [1076], the situation had been largely changed by the fact that Henry had been excommunicated by the Pope. It was not that the Saxons had less to fear or to resent in the royal policy, for the royal policy as regards Saxony had not changed. The castles were in course of rebuilding, two of them, the famous Harzburg and another, under the directions of Otto of Nordheim, whom the king had taken into his confidence, and appointed to administer the affairs of Saxony; many of the Saxon leaders were still in prison, among them the Bishop of Halberstadt and the Archbishop of Magdeburg; the Swabian officials

had resumed their exactions of tribute, and the Swabian garrisons their life of plunder; two young Saxons of good birth but of little property or importance, the sons of Gero, were able to collect around them a large army of their countrymen, which became sufficiently powerful at last to measure itself openly with the enemy; and when many of the Saxon princes were released from prison, the king's garrisons, one after the other, were compelled to evacuate their strongholds and leave the country. Wise concession on the part of Henry would no doubt here have prevented the spread of further evil. The Saxon nation had been decimated by the battle of Homburg, and the peasantry was never anxious for war. Otto of Nordheim, listening to the appeals of his countrymen, urged the king strongly to guarantee the liberties and laws of his race, and Henry went so far to meet the rising indignation of the people as to release all his prisoners with the exception of Burchard of Halberstadt, whom he regarded as the main author of the war. But he would go no further, and he was determined not to forgive the men who had expelled his garrisons. He put off a meeting which had been arranged to be held at Saalfeld for the settlement of the Saxon question, and summoned Otto to meet him with his men at arms in the March of Meissen, whither he intended to bring an army by way of Bohemia to punish the rebels. Otto had hitherto pursued a policy of mere self-seeking. He had utilized the Saxon revolt that he might put pressure upon Henry to restore him the Bavarian duchy, and perhaps also he had dreams of the German crown. Then after the battle of Homburg he turned round, became the king's agent in Saxony, rebuilt the king's castles, lived in the restored Harzburg. Yet his apostacy does not appear to have been

gravely condemned, and indeed it was cloaked by the attitude of mediation which he now adopted. Otto could not afford to be on the beaten side, nor was he disposed to throw away his influence with the vanquished. He first played the rôle of "go between," and then, when the king showed himself resolved on renewing the war, he broke off negotiations. Self-interest alone would have taught him to resist a Slavonic conquest of Saxony, but he was chiefly moved by the king's rejection of his overtures. He refused to obey the royal summons, and the princes of Saxony and Thuringia followed his example. They would not assist Henry to crush the sons of Gero; and when the news came that the king's Bohemian allies were carrying fire and sword through the March of Meissen, the whole country sprang to arms spontaneously, in a kind of desperation. Seven thousand horsemen rode on to the Mulde to attack the king, and they were followed by larger levies. Envoys were sent to entreat the Swabians to renew the treaty, and to co-operate in the appointment of a new sovereign. Henry retired through Bavaria to Worms.

But although the main centre of opposition to Henry all through the war of the Investitures lay in Saxony, where the flame of indignation was fed by local grievances, yet the war was no longer exclusively a Saxon war, and the Saxon question tended more and more to be merged in the larger ecclesiastical question which divided Germany. The watchword of the Saxons was now no longer "The release of Magnus," or "Our Liberties and Law," but "The cause of St. Peter." The Saxons were the knights or the faithful servants of St. Peter. And it was even asserted that the land had been specially dedicated to that saint by Charles

the Great. At the battle of Melrichstadt, in 1078, a Saxon soldier saluted an enemy, under the impression that he was a friend, with the words "St. Peter." "Here is a present from St. Peter," cried the enemy, levelling a blow at his head. "And here is a present from your mad tyrant Henry," cried the other, cleaving him to the brain. As the Saxon host marched to the battle of the Elster, the bishops ordered them to sing devoutly the eighty-second psalm. It was a religious war, waged now with a kind of steady trust in the immovable support of the Holy See, and in the righteousness of the cause.

It is then a war which has ceased to be fought upon exact racial lines. The party of St. Peter numbers adherents everywhere, in the Black Forest, on the Rhine, in the plain of the Danube, as well as in the Harz Mountains. The Saxons depend in some measure upon the Swabian knights who follow the banner of Bertold and of Welf. In the course of the struggle four anti-kings are successively pitted against the emperor, Rudolf of Rheinfelden, Hermann of Luxemberg, and the emperor's own sons, Conrad and Henry. The first was a Swabian, the other three were Franks. No Saxon seems ever to have been suggested, and when the Saxon princes, upon the death of Rudolph, in 1080, issued invitations to the other princes of Germany to proceed to an election of a new king, they specially stated that, if Henry and his son were excepted, they would faithfully obey any ruler who might be chosen, "that all the members of the kingdom might unite as of old under one king." Again, the first battle fought by the second anti-king, Hermann, was a battle fought between the Swabian adherents of St. Peter and the Bavarian followers of

the king. In the battle of Pleichfeld, in 1086, a Swabian and a Saxon battalion vanquished the knights of the Lotharingian and Franconian bishops. Even in Bavaria, which is mainly royalist, there will be found two or three powerful supporters of St. Peter, just as in Saxony, which is mainly for St. Peter, there will be found supporters of the royalist cause. Henry will be able by degrees to detach even the Billungs, and the Westphalians will resist the Petrine anti-king, Hermann.

Still, during its earlier stages, the contest is mainly one between Saxony and the other German peoples. The king is strong in the assistance of the Rhenish towns, of the city of Regensburg, of the Bavarian, Swabian, Bohemian, and Lotharingian chivalry, of the South German bishops, of the Franconian peasantry.[1] At the assembly of Forcheim, which elects Rudolph of Swabia king in 1077, thirteen bishops are present, but only two of these come from Bavaria, and only one from Swabia. The assembly of Ochsenfurt, which elects his successor Hermann in 1081, was composed of a Saxon army enforced by the Swabian followers of Duke Welf, and by a few Lorrainers. General representation of the South German princes there was none. For the Saxon historian, Bruno, the war still remains, as it had begun, a Saxon war, *Bellum Saxonicum*. The armies which fight for Rudolph at Melrichstadt in 1078, and at Flarcheim in 1080, are Saxon armies. The battle of the Elster, in which Henry was defeated and Rudolph was slain, was fought between a Saxon army on the one hand

[1] Helmold, i. 28, "Ceteri principum civitatesque que sunt circa Renum non receperunt eum, omnesque Francorum populi eo quod jurassent Heinrico et juramenta temerare noluissent."

and a force of Bavarians, Lorrainers, and Swabians on the other. It was not that the Saxons were peculiarly immaculate. Their simony and their Nicolaitism were rebuked by the stern Swabian reformer of the Black Forest, William of Hirschau.[1] But so long as Hildebrand lived, Saxony was the soul of opposition to Henry. When the Pope was attempting to mediate between Henry, who has received absolution at Canossa, and Rudolph, who with the sanction of the papal legate has been elected king at Forcheim, the Saxon leaders passionately expostulated against the treachery of the papal chair; and a course which might possibly have succeeded in a more tranquil atmosphere, in an atmosphere undisturbed by the passions of the Saxon war, was from the first rendered abortive by the obstinate determination of the Saxon race to defend Rudolph and their own liberties at any cost.

The importance of the Saxon resistance to Henry during the years 1075-80, when the papal chair was pursuing a policy of mediation, cannot easily be overestimated. Gregorian ideas had as yet made little way in Germany, less, it may be, in Saxony than in Swabia and Bavaria.[2] The German church had long been the most secular, the least papal branch of the Catholic tree. It had been secularized by the policy of the Ottos, by the lack of strong central government, by the defective intellectual culture of the land. Even when a German monarch like Henry II. had thrown his weight into the cause of ecclesiastical reform, how slight was his success, how strenuous was the opposition! And now, in the

[1] *Sudendorf Reg.*, i., xv., xvi.; Mansi., xx. 609; Bernoldi, *Chron.*, 1085; Walram, *De Unitate Eccl.*, ii. 22; *Libelli de Lite Imperatorum et Pontificum*, ii., p. 239.

[2] The clergy in the diocese of Osnabrück appear to have been almost totally illiterate (*Vita Bennonis*, SS. xii. 63).

eleventh century, the Hildebrandine thunders would have made but a faint echo in Germany, had it not been for the bitter outstanding quarrel between the monarchy and the Saxon race. When, in 1088, the Saxons, weary with the long struggle, deprived of their real leaders, Otto of Nordheim and Burchard of Halberstadt, make their peace with Henry, not only has the monarchy been shaken to its foundations, but Gregorian ideas have made rapid progress in Swabia and Bavaria. Whole villages give themselves over to the monastic life. The monasteries of William of Hirschau spread their influence through the land, and Swabia becomes the protagonist of St. Peter, governed by ecclesiastical influences, swearing obedience to Gebhard, the Gregorian Bishop of Constance, and to his Gregorian brother, the newly elected Duke Bertold. The theatre of the war passes from Saxony to Swabia, and the last episode is connected with Bavaria.

The Saxon wars did not end with the death of Henry IV. There was a man called Lothair, son of an Eastphalian Count Gebhard of Supplinberg, who had fought in the wars of Saxon freedom under Otto of Nordheim. Of his bearing in these struggles we know nothing, but he was married to one of the richest heiresses in Saxony, Richinza, daughter of Henry of Nordheim and Gertrude of Brunswick, and niece of Eckbert of Meissen. Henry V. made Lothair Duke of Saxony. Whether Henry could have done otherwise it is useless to inquire, for Lothair was the richest man in Saxony, and the representative of the family of Otto of Nordheim. But the result was that Lothair ruled Saxony almost as an independent sovereign. The male line of the Billungs died out in 1106, but Lothair was far more powerful than the

Billungs ever had been. Within the Saxon duchy he was more powerful than the emperor himself.

It is doubtless true that the office conferred upon Lothair by Henry was technically nothing more than the dukedom, which the House of Billung had enjoyed, but in a barbarous society the man makes the office, not the office the man, and constitutional technicalities are neither clearly thought out nor carefully observed. Under Lothair the Saxon duchy became representative of all the interests of the Saxon race. The duke stood forth as the champion of the Saxon nobility, of the right of collaterals and of females to succeed to imperial fiefs. Once in the case of the House of Weimar, and again in the case of the Margraviate of Meissen and of Lausitz—the two most critical outposts of German civilization in the East—Lothair defends the female claim. And yet if the claim is made good, what will become of imperial influence in the duchy? When the emperor enters the land with an army to chastise this powerful vassal, Lothair defeats him in the decisive fight of Welfesholze [1115]—a fight which once and for all decides that the Salian House is never to plant itself upon Saxon soil. When the emperor makes appointments to the Saxon marches, Lothair makes counter appointments, and the nominees of the duke, though they have no family or local connections to recommend them, make their way against the nominees of the emperor. A strong man like Lothair, with few scruples and ample wealth, easily piles up office on office, revenue on revenue, in such a disturbed land as Saxony was then. Here an archbishop of Bremen, captured in an affray, purchases his release by the gift of the advocacy of his see. The advocacy of Verden goes to the same quarter. Overlord of all the Slavic and Nordalbingian

tribes, who are united under the rule of Henry the son of Gottschalk, defender of the Saxon peace, Lothair is the real ruler of the Saxon race. The Saxon nobles meet in 1120 and swear a land peace. The emperor has no part or lot in the matter. The union of Saxony and the Holy See was too strong for the monarchy of Henry V., as it had been too strong for the monarchy of Henry IV.

In 1126 Henry died, and Lothair was elected king in his place. There were many strange transformation scenes in medieval German history, and this transformation of the elderly Saxon rebel into the German king and Roman emperor is among the strangest. The election was not universally acceptable. The Franconians murmured at the appointment of a Saxon, and attempted to substitute Conrad, the cousin of the late emperor. But the Saxon duke possessed four important qualifications. He was orthodox, vigorous, old, and heirless. In 1123, as Duke of Saxony, he had mastered a coalition of Saxon nobles, who had begun to fear his power and to suspect his designs, and from whose minds his own vigour had already effaced the countervailing dread of the imperial hand. For fourteen years the Saxon duke was also German king and Roman emperor, surrounded usually in the main by Saxon princes, and attended chiefly by Saxon troops. It was as it were a new incorporation of Saxony into the empire. But the reign of Lothair was too brief to alter in any permanent way the relations of Saxony to the rest of Germany. In 1139 the crown passed to Conrad III., the first of the Hohenstauffen dynasty, from a North to a South German.

The peculiar strength of the Saxon opposition to Henry IV. was due to the fact that it was the

opposition of a whole people. When the Saxons met in 1073 to consider their grievances, the speeches which exercised most effect upon the audience came from two undistinguished men, in whose fears the free peasantry of the country saw the image of their own. But the war changes the social texture of the land. The free peasantry suffers enormous loss upon the battlefield; the survivors take to the military life, enrol themselves in a noble's company, commend themselves for protection to a lord. The poor freeman becomes either a villein or a *ministerialis*. He joins perhaps some company half-bandit, half-military and patriotic, like that which the two sons of Gero gathered round them to make war upon the Swabian castles. In the general dissolution of things every noble fights for his own hand, and some fight successfully and reap abundant reward. We are confronted with a powerful Landgrave of Thuringia in the reign of Henry V., where we knew only of the Archbishop of Mainz and his rebellious Thuringian tithepayers in the reign of Henry IV. A Bavarian Hermann of Winzenberg suddenly becomes a notable figure in East-Saxon feuds, favoured by Henry V., killing one of the chief counsellors of Lothair, condemned, besieged, imprisoned by the Saxon king. With the disappearance of the free peasantry, with the surrender of all attempts on the part of the kings to make a permanent capital or royal domain in Saxony, with the Concordat of Worms in 1122, which puts an end to the ecclesiastical struggle, some of the most important forces, positive and negative, which had united the Saxon race in the eleventh century, disappear. The ambitions of competing noble houses henceforth form a large part of the strand out of which Saxon history is

woven. At the same time the old racial unity and exclusiveness crumble away. The Saxons push on across the Elbe and mix with the Slavonic settlers. Hollanders and Flemings bring their heavy ploughs and their industrious habits into the marsh lands near Bremen and Verden, and join the army of the colonizers of the East. By the middle of the thirteenth century the Saxony of the Ottos and of the Henries has disappeared in a crowd of small feudal lordships and independent cities. The hardiest specimens of the race have presumably trecked into the trans-Albian lands far beyond the limits of the old duchy. The personality of the Saxon race has been lost.

Feudal tendencies ripen fast during the concluding years of the struggle for the Investitures, yet it is some time before they are strong enough to conquer the wide-spreading family connections, the popular and long-inherited prestige of the old ducal house. A daughter of Magnus, the last male heir of the Billung House, married the Welf, Henry the Black, a Swabian by origin, brother of the Bavarian duke. She brought into the Welfic family Luneburg, the chief Billunger fortress, and the land around it. Their son Henry the Proud, Duke of Bavaria, married Gertrude, the daughter of Lothair, the richest heiress in Saxony, and on the death of his father-in-law Henry became the most powerful man in Germany. The heir of the Brunos, of the Supplinbergs, the inheritor through Lothair of Otto of Nordheim and Eckbert, the heir of the most important part of the Billung inheritance, Henry the Proud seems marked out to confirm and to stereotype the unity of the Saxon race, to maintain its independence, to crush its internal feuds. Although he is half a South German, his appearance in Saxony is sufficient

to decide the day for the Welfic House against Albert of Ballenstadt, who also, through his mother, inherits of the Billungs, and has been invested with the Saxon duchy by Conrad III. Town after town falls to Henry. In one year the Welfic House is established in the land, and, once established, all the efforts of Conrad and his ally Albert are made in vain. In 1139 Henry dies unexpectedly; most fortunately, it would seem, for the Hohenstauffen House and its Saxon protegé, for Henry's heir is a lad of ten years of age. But the Saxon nobility accept the youthful Henry the Lion as their duke; they refuse to attend princely gatherings summoned by the emperor; and the emperor refuses to guarantee them a safe conduct. They are declared traitors to the empire. A host is proclaimed against them, and it seems as if a new series of Saxon wars is about to begin.

Then Conrad made a resolution, which he would indeed have violated later, but which became the keystone of the imperial policy towards Saxony for thirty-nine years. Since he could not uproot the Welfs in Saxony, he would ally himself with them. He would recognize Henry in his Saxon duchy; he would bind him to the throne by family ties, marrying Henry's mother, Gertrude, to Henry of Austria, his own brother; and in return for that he would secure Albert of Ballenstadt, who was to be the counterfoil to Welfic influence in his country and his eastern march. And this policy receives a further extension under Frederick Barbarossa, who is half a Welf, who has his eye fixed on Italian schemes, who has learnt by the experience of his Salian predecessors, not to meddle too closely in Saxon affairs. At the very outset of his reign he comes to terms with this Lion of the North. He concedes everything which

the Lion may demand, the Duchy of Saxony, the Duchy of Bavaria, royal powers of ecclesiastical investiture in Saxon lands, and in lands conquered from Wends, free powers to dispose of new acquisitions from the heathen Slave. Never has a German king made such concessions to a subject since the days of Henry the Fowler and Duke Arnulf of Bavaria. So long as the Saxon duke attends imperial assemblies, contributes to imperial armies, he may govern Saxony as he pleases. By a kind of informal understanding the north of Germany is given over to Henry the Lion, while Frederick confines his attention to the south.

Henry the Lion has made a great mark in the history of Northern Germany, as the conqueror of Slavonic peoples, as the founder of German towns, among them Lubeck, the destined chief of the Hanseatic League, the Venice of the North. His position and his work were ultimately rendered possible by the failure of Henry IV., and of his son, to vanquish the opposition of the Saxon race. The Welfic House gathered in the scattered heirlooms of the men who made themselves famous in that crisis of Saxon history, Magnus the Billung and Otto of Nordheim, and Eckbert of Meissen and Lothair. This was the source of their influence. And they were able to maintain themselves for a long period in Saxony, because the men from whom they derived their power had excluded the German monarchy from the Saxon soil. Yet in 1180 Frederick Barbarossa was strong enough to declare the ban of the empire against Henry the Lion, to banish him from Germany, to divide up his Saxon duchy, and to give the parts away from the Welfic House.

We may well ask how this was possible, and what had become of the feeling of Saxon race-unity, which is so

vigorously depicted in the pages of the two historians of the Saxon war. The answer we have already partially anticipated. It is that Saxon race feeling had become steadily fainter and fainter, as the memories of the great Saxon war grew older, and as the feudal influences fostered by that war grew stronger; that even during the Saxon war itself Westphalia had been lukewarm and had shown a tendency to separate itself from East Saxony; and that this tendency became more and more strongly marked, as East Saxony became more and more dominated by the family of Albert the Bear, which inherited one half of the Billunger lands, and as North and West Saxony became more and more influenced by the family of Henry the Proud, which inherited the other half. Even during the height of Henry the Lion's power, he is confronted by a formidable coalition of Saxon family interests grouping themselves round the rival house of Ballenstadt, now firmly planted in the March of Brandenburg, and destined to grow more and more powerful in this province reclaimed from the heathen Slaves. There is Lewis of Thuringia, jealous of the new founded dignity of his house; there is Christian of Oldenburg, whose strength lies among the Frisian marshes and in the proffered loyalty of Bremen; there is Wichmann of Magdeburg, and Hermann of Hildesheim and Rainald of Cologne, and Hartwich of Bremen, prelates of the Church, who pursue interests purely of this world. There is the town of Goslar, where Henry has been advocate and oppressor; and there is latent sympathy in Saxony for the cause of Alexander III., against whom Henry and his sovereign were leaguing the forces of the empire. In 1154, when Henry was with Frederick in Italy, conspirators met in the Bohemian forest, and there was inconclusive fighting in Saxony. In 1166 and 1167

the feudal opposition bursts out again stronger than ever. The Archbishop of Cologne and Magdeburg make a defensive and offensive alliance with Albert the Bear and the Saxon nobles [12th July, 1167]. More than a dozen princes join the league, and Goslar and Halberstadt are captured by the insurgents. It was a war of sieges and of ravaging, like all German wars, ineffective, cruel, and desultory, dragging itself out till in 1169 the emperor intervened and made peace between the combatants at Bamberg.

Yet for some years afterwards Henry more than maintained his own in Northern Germany. He married Matilda, daughter of Henry II. of England in 1168. His own daughter Gertrude married Cnut, the eldest son of Waldemar of Denmark. The alliance of the Saxon duke and the Danish king pacified the restless North, and in 1172 Henry the Lion went to Palestine, leaving Saxony to be governed by his wife. Yet there is no record of any disturbance during his absence. The land too must have been quiet when he returned in 1173, for he begins to build the cathedral of St. Blaise at Brunswick and churches at Lubeck and at Ratzeburg. A slight flicker of revolt in East Saxony, led by Bernard the Ascanian, in 1175, is promptly extinguished, and when in 1176 Frederick was defeated by the Lombard league at Legnano, Henry the Lion, who declined to help him, seems to have been at the zenith of his power.

Three years afterwards, on August 15th, 1179, Henry was summoned to appear before a council of princes at Goslar, and did not obey the summons. The princes declared that he must be deprived of his duchy, and on Jan. 15, 1180, the ban of the empire was formally declared against him at Ulm, on Swabian land. The

Saxon duchy was carved into pieces. All that was east of the Weser was given to Philip of Cologne; all the ecclesiastical benefices and advocacies were resumed by the bishops. The residue of the duchy went to Albert of Anhalt, one of the sons of Albert the Bear.

The story of the catastrophe of Henry the Lion will never be completely unravelled. Did he fall for refusing to serve the emperor in Italy? Did he fall because the Saxon princes were greedy for his lands and his offices? Did Frederick sacrifice him for money, as some of the evidence seems to suggest? Or did he name a prohibitive sum as the price of his mediation, in order to salve his imperial conscience, and then loose the hounds of war upon the duke? Did the emperor store up in his heart the rage and chagrin of Legnano for three whole years, waiting for the storm clouds of Saxon jealousy to gather, biding his time until vengeance should be swift, certain, and irresistible? Or was Frederick, open-hearted and chivalrous as he is said to have been, ready to forget and forgive Henry's desertion, until the complaints of the Saxon nobles revived the memory of that humiliating day? Or did Legnano go for nothing in the matter at all, and was Frederick merely jealous of the success and power of his coadjutor, of his cathedral and his churches, his Italian war-engines, of his English and Danish alliances, his brilliant campaign against the Slaves? Was he simply overborne by the malignity, the greed, and the power of Ulrich of Halberstadt and Philip of Cologne? Did he affect to believe the story that Henry had betrayed Germany by inviting the Slaves into Lusatia? Was the emperor the guiding spirit in the affair, or was he merely the willing fly on the wheel of Saxon indignation? One thing only is certain. The execution

of the sentence upon the duke was only possible because the Saxon nobles willed it, executed it, entered into the spoils of it. The emperor himself did but one thing; he besieged Lubeck and took it. The break up of the duchy was the work of the nobles. It was their greed which gave to the ban of Ulm its irresistible power. Had it been otherwise, how was it that in 1189, when Frederick was on crusade, and the old duke returned from exile, he was unable to reconquer his former position? The men of Holstein rose against him. The three most powerful Saxon nobles—Adolf of Schauenberg, Otto of Brandenburg, Bernard of Saxony—ravaged his lands in 1191. In 1192 Adolf reduced Lubeck, and when, in 1195, Henry passed away at Brunswick, the capital which he had adorned and enriched with the costly relics of a pilgrimage to Jerusalem, the Welfic house was left with merely a fraction of its early power.[1] The true heir to the Saxon duchy of Henry the Lion is not the emperor, for he is engaged in schemes of Italian conquest and of crusade. The true heirs are the nobles of Saxony, who had grown past imperial control during the wars of the Investitures, who rose against Lothair till he quelled them, who crusaded against the Wends in the days of Conrad III., who are settling and colonizing Slavonic lands, and who, freed from all those old tribal and ecclesiastical influences which once fortified Saxon unity, are now playing a frankly cynical and brutal game of individual self-advancement.

If now we ask what was the importance of the racial element in German history during this period, we

[1] Henry the Lion left three sons: (1) Henry, who received Brunswick and the Palsgraviate of the Rhine; (2) William, who received Lauenberg and Luneberg; (3) Otto, who received Haldersleben.

must answer in the first place that it was far more important than it deserved to be. These German races, as we have seen, were not widely different in blood, in speech, in civilization. They were probably not more different one from another than were the Angle, the Jute, and the Saxon, who were welded together into one kingdom and one people under Egbert and his successors in England. The Bavarian law of the eighth century contains extracts from the law of the Ripuarians, which is Frank. The *Schwabenspiegel* of the thirteenth century, which becomes the popular law book of South Germany, is based upon the *Sachsenspiegel*, which is the popular law book of North Germany.[1] The Bavarians and the Swabians accept placidly such dukes as the emperor may choose to nominate, and the dukes will most often be neither Bavarians nor Swabians. The dukes of Bavaria will be Saxons, Swabians, Salian Franks, Lorrainers.[2] Sometimes the duke is an infant. Once the duke is a duchess. Nothing is easier than to transplant a North German to the south, or a South German to the north. He will strike root forthwith and flourish. The Church, too, is a great leveller of race distinctions, which are seldom observed in ecclesiastical appointments. Some of the most vigorous Saxon prelates came from the south, some of the most influential Bavarian churchmen from Saxony. In legal matters there is, on the one hand, an intense spirit of provincialism, and on the other hand an eclecticism which is almost careless in its generosity. There is much attachment to the *Consuetudo terrae.*

[1] The use of the *Schwabenspiegel* was also widely diffused in Central and Northern Germany. Cf. the map of the MSS. published by Rockinger, *Untersuchung der Handschriften des Schwabenspiegels.*

[2] Cf. Genealogical table.

Men will die for it, as the Austrian *ministeriales* died for it in 1231. But there is also a readiness to accept every scrap of law from any quarter, and to incorporate it with the ill-defined and floating body of the *Consuetudo*. There are three reasons for this apparent contradiction. In the first place, man thirsts for definition, for guidance. Where so much is indefinite he is thankful for a rule, and the *Landrecht*, even where, as in Austria or in Saxony, it gets written down, leaves much quite vaguely to unwritten custom. In the second place, the similarity of Germanic law and the similarity of conditions, under which Germanic life was carried on in any given period, was so great, that it would be possible to smuggle a rule pertaining to any part of the Germanic region into any other part without creating a sensation.[1] In the third place, there was a great lack of what may be termed exact constitutional sense in the medieval German. Even the professional scribe will use terms loosely in an official document. There is no strong central government or defined hierarchy of officials to discipline the mind. The emperor is uncertain, migratory, often nugatory. It is common experience to see his judgments overturned, his word set at nought, his arms defied. Men under these circumstances clutch at every stick and straw of authority, no matter how acquired or by what title. If the emperor will legislate for them, or decide a case for them, well and good. But they will accept legislation from any one

[1] It is an illustration of this that, while Rauch [*Ost. Gesch.*, ii., pp. 359-67] assigns the Austrian *Landrecht* to the thirteenth century, on the grounds of its similarity to the *Stadtrecht* of Vienna, Zöpfl [*Deutsche Staats und Rechtsgeschichte*, ii., p. 152] puts it a century later, on the ground of its similarity to a law book finished by Rupert of Frisingen in 1328.

who has a strong arm; they will accept a rule of law or of procedure from any quarter so long as it serves their turn. If the legal map of Germany is variegated, there are no striking contrasts of colours. At every point the tints are ready to blend. It needed, then, but a little pressure from outside or from above to weld these four German tribes, so similar and so malleable, into one compact people. England had the benefit of Danish wars and of the West Saxon dynasty. Germany saw the last of the Hungarian inroads before the work of consolidation had really begun, and the dynasty of the Ottos, which might have been able to carry out that work, was lured across the Alps by the phantom of the empire. So the pressure from above never came to compensate for the absence of the pressure from outside. The races were left to develop themselves on their own lines, or rather to stagnate in their separate isolation. The men of the great cheerless northern plain lived a life apart from the men in the Bavarian and Swabian uplands, and from the men in the valley of the Rhine and the Neckar. The Low German tongue of the Saxon would have been unintelligible at Regensburg or at Ulm. The imperial service of the Saxon contingents was mainly performed in Bohemia and the Slavonic border.[1] While the Franconians, Bavarians, and Swabians followed Conrad the Third to Asia Minor, the Saxons enlisted for a crusade against the Wends. The line of cleavage seems even in the period of the tribal duchies to have been largely geographical, the

[1] It was naturally difficult to induce North Germans to serve in Italy. Cf. 1236, "Inde Imperator veniens Confluentiam inferiorum partium militiam invocat contra Longobardos; sed paucis sibi annuentibus milites de Suevia et Alsatia sibi assumit," *Chronica Regia Coloniensis, Cont.* iv., 1236.

cleavage between the north and the south. The Rhenish towns, the bishoprics of Wurzburg and of Bamberg, the wide territory of the Abbey of Hersfeld, swallowed and divided the Franconian population. The Saxons took no part in the great fight against the Hungarians in 955. They had little share in the Italian expeditions under Otto II. and Henry II., while they often bore the sole brunt of the fighting on the Slavonic border. On the other hand, the Bavarian and the Bohemian contingents were mainly concerned in the Hungarian wars of Henry III.[1]

Under the Hohenstauffen the Swabian duchy was annexed to the empire, and the only independent element of Swabian power was left in the towns. The Bavarian race was more coherent, and the Bavarian duchy was stronger and more lasting. Yet the boundaries of the duchy tended more and more to differ from the boundaries of the race, a proof that the race was not sufficiently conscious of unity to determine the political outline of the regions in which it was settled. But the separation of north and south can be traced throughout the story, in the Saxon wars, in the Wendish crusade, in the exceptional position accorded to Henry the Lion by Frederick Barbarossa, in the coalition of Cologne and the Saxon Welfs against Philip of Swabia, in the support given to William of Holland by the princes of the north-west against the son of Frederick II. Climate, distance, language, race, family hatred, trade alliances entered as elements of disunion. It was a divergence which was not yet complete, or clear, or perhaps consciously

[1] Waitz, *D. V. G.* viii., p. 140. Cf. also *Deutschenspiegel Lehnrecht*, 10: "Alle die aber in osterhalb der sale belehent sint von dem reiche, die sallen dienen zu vuinedin und zu polen und ze Bechaim," and *Sachsenspiegel Lehnrecht*, 481.

felt. It could not have been expressed except in racial terms. But the logic of events was making it stronger and more difficult to overcome as time went on.[1]

It would be possible to bring out the importance of the racial factor in a more salient way, somewhat as follows. "There was," it might be said, "in the course of this period one attempt made on the part of the monarchy to procure a territorial basis in Germany, to form a kind of royal domain, as the French sovereigns of the Capetian House were doing, with a capital and a regular revenue, and perhaps a rough local administrative system. It was the attempt made by the three last kings of the Salian House to establish themselves in Saxony. What a revolution this would have brought about had it been successful, had this homeless German monarchy been firmly brought to anchor in the Harz Mountains, to spread the circle of its power steadily outwards through the German lands! It is now that racial influence becomes all important. This attempt to bring the monarchy to anchor was made by a Swabian on Saxon soil. It was made injudiciously, tyrannically, under circumstances which aroused the worst fears, and it brought out the Saxon race in arms. In the contest which ensued the imperial design was defeated. Never again did a German king attempt to make a capital or to form a royal domain in North Germany. When half a century later the Emperor Frederick Barbarossa looks about for revenues to support his far-reaching schemes of con-

[1] It is possible that racial jealousies may have helped to defeat the scheme for making the monarchy hereditary, which was propounded by Henry VI. For the available texts on this obscure episode, Toeche, *Heinrich VI.*, *Beilage* x., pp. 587-92. Innocent III. used the racial argument in 1198. *Reg. de neg. Rom. Imp.*, lxii. [Migne, 216, col. 1067].

quest and dominion, his eyes will turn not to the flats of Westphalia or to the wooded mountains of the Harz, but to the thriving plain of Lombardy, with its glittering cities rich in the opulence of the East. There were in Bologna professors skilled in the Lombard and the Roman law to tell him that, as the wearer of the iron crown, he could tax this wealth, even as Alboin and as Luitprand had taxed it. He issued decrees upon the plain of Roncaglia, which, based upon the antiquarianism of these Bolognese doctors, were calculated to bring in thirty thousand pounds a year; and these decrees, being utterly unexpected by the Lombard populace, and requiring to be enforced by unpopular German officials at the cost of the liberties of the Lombard towns, caused those towns to league themselves together and to oppose the emperor. And the emperor was beaten in a pitched fight, and at last, in the twenty-fifth year after the decrees were issued, he was bound to acknowledge the practical independence of these North Italian towns, and to renounce the hope of obtaining a fixed imperial revenue from the Lombard plain. But meanwhile he has spent some twelve years of his life in Italy, fighting and doing justice, and negotiating and seeking by every means to extend his power. And just as he is forced to the conclusion that North Italy has escaped him, a peaceful avenue opens out into the Norman kingdom of the south. Frederick might have looked the other way, might have piled up more advocacies, built more castles, bought more lands in Swabia. He was master of Germany, and a statesman would have been contented. But twelve years of Italian sunshine had ripened other ambitions in his heart. Three years after the peace of Constance, 1183, when he was forced

to acquiesce in the continued existence of the Lombard league, the heiress of the Sicilian kingdom becomes the bride of his eldest son, and the Sicilian kingdom gives to this German dynasty in the South just that material basis which the rising of the Saxon peasantry had refused it in the North. It was a kingdom which had long enjoyed a centralized government, a full revenue, a flourishing trade. It was a kingdom in which the power of the nobility was balanced by a large mercantile and professional class, which had inherited a financial system of great merit and elasticity from the Saracens and the Normans, and which could provide a standing army of Saracen slaves to the man who was bold enough to use them. It is no wonder that the Hohenstauffen, appreciating these advantages, became less and less German, and more and more Italian. Already Frederick I. had spent more days in Italy than all his predecessors put together since the Ottonian revival. His son, Henry VI., with his Sicilian wife, is practically an Italian sovereign; and his son Frederick II. is so much of an Italian that only three times does he set foot in Germany. How momentous a change! The later Hohenstauffen leave Germany to the princes. Even under Frederick the First, signs are not wanting that the princes will be the powers of the future. About 1180 the term '*princeps*' becomes restricted to a small knot of the greater nobles, who are now regarded as essential to the conduct of imperial affairs. By the end of the Hohenstauffen dynasty some of these nobles have become powerful and independent sovereigns, so powerful and so independent that the emperor will ever after have to be a shadow king in Germany. If he is to be anything more than a shadow king anywhere,

he must win in Austria or in Bohemia that territorial basis for his power which Henry IV. attempted to win in Saxony, Frederick I. to revive in Lombardy, Henry VI. and Frederick II. to preserve in the Norman kingdom of Sicily. The seeds of the Hapsburg empire, with its peculiar non-German and cosmopolitan character, are sown far back in the eleventh century in the Saxon revolt under Henry IV."

Such a statement represents the chain of events, but it obscures the chief motives of the age. Frederick Barbarossa did not war mainly for money. Pride of race, lust of conquest, a desire to revive the old claims and to discharge the neglected duties of the Roman Empire, these were the thoughts and passions which ruled his life. There was no compulsion on him to touch the cursed hoard of Lombard gold. He possessed a considerable domain in Swabia, and he increased it. To the Salian and Welfic inheritance he added numerous ecclesiastical fiefs and advocacies. He was Duke of Swabia, Lord of Alsace; he had absorbed the County of Burgundy; at one time he controlled the Palatinate. He had large possessions in Pleissen. There was no compulsion on him to seek and accept the Sicilian heritage. At the time of his son's marriage, in spite of his failure in North Italy, he was master of the hearts and the blades of his Germans. His court was brilliant. He had banished his strongest subject, he had divided up the Bavarian and the Saxon duchies. There was no lack of men to follow him to the end of the world. But he accepted the Sicilian heritage. The reason was not financial, though finance may have entered into it. It was, first and foremost, imperial, as the reason for the Roncaglia decrees had been first and foremost imperial too. How many

emperors had snatched at power in Apulia and Calabria since the first Otto made his South Italian campaign, "labouring to restore Apulia to our Italian kingdom, Apulia which has been snatched from us by the Greeks."[1] What streams of German blood had been poured out among the bare Apulian hills, both before and after the day of Cotrone, when Otto II. was defeated by the Saracens and the Moors, and "the purple flower of the country, the pride of yellow Germany, was mowed down by the sword."[2] How many diplomatic combinations had been woven to win back this beautiful land! The alliance of Henry IV. with Alexius, the treaty of Conrad III. with Manuel, the negotiations of Frederick with the Byzantine Court, the long series of imperial privileges to Genoa and Pisa. And now the Norman kingdom came to the emperor in the easiest of all ways, by marriage. He would have been more than human, if he had not matured and accepted the occasion. Had he forgotten the Apulian fugitives from the iron rule of Roger II., who sought his aid at the court of Wurzburg on the morrow of his coronation? Or how in the morning of his youth he had descended into Italy to punish the Norman usurper, making treaties with Eugenius III. and Hadrian IV., and buying the Pisan fleet by privileges? In those days the prospects of success were fair indeed. There was rebellion in Apulia and Sicily. A great Mussulman rising threatened the Sicilian conquests in Africa. A Greek fleet was off the Calabrian shore, and the Norman monarchy seemed destined to extinction. Frederick cannot have forgotten his hopes, still less his illusions. There was a man at the court of William I. of Sicily—

[1] *Diplom. Ott.*, No. 367; Stumpf., 463.
[2] Brunon, *Vita S. Adalb.*, c. 10, SS. iv. 598.

his detractors said that he was the son of an oil-seller at Bari—who is mainly known to us through the polished and passionate invective of a great historical artist, Hugh Falcandus. Hated by the Sicilian aristocrats, Maio, the Grand Admiral of Sicily, in three years vanquished all his difficulties and shattered Frederick's hopes. Daring to neglect Africa, he swept the Greeks from Southern Italy, took Brindisi, destroyed Bari, sent a fleet into the Levant which ravaged Negroponte and insulted Byzantium. He made a treaty of thirty years with the Greek emperor, a treaty with the Pope, treaties with Venice and with Genoa.[1] In 1158 the kingdom was so strong that Frederick relinquished his plan of a campaign in the south and turned to besiege Milan. Then for nineteen years Sicily provided the sinews of war to the papal party in Italy. Ambassadors from Palermo met the envoys of Milan and Crema, Brescia and Piacenza, and encouraged the resistance of these Lombard towns. It was firmly believed in Germany that Adrian IV. and the Cardinal Roland had entered into a conspiracy, that on the death of the Pope no one should be elected to the papacy unless he were a member of the league, and that the election and the resistance of Alexander III. was the work of the Sicilian sect.[2] These injuries Frederick had never been able to avenge. On the contrary, since the Pope would not treat independently of the Sicilian king, he had been forced to make peace with William II. in 1177, and to recognize his title. Yet to his mind, doubtless, as to that of Gervase of Tilbury, the Sicilian sect, with its powers of pecuniary corruption, had been at the bottom

[1] Siragusa, *Il regno di Guglielmo I. in Sicilia.*

[2] *Ann. Stad.*, SS. xvi. 344; *Otto Fris. Gesta.* iv. 52, 69, 71, 72, SS. xx. 473, 484, 87, 88; *Neues Archiv.*, xv. 409.

of all his troubles.[1] Could he have resisted the temptation of removing this long-standing adversary by a marriage alliance? No Roman emperor would have stood by and seen the heiress of Sicily give her hand to a Frenchman or a Greek.[2] And so in 1178 Frederick sent an ambassador to Palermo to treat for the hand of Constance, who even then seemed destined to inherit the kingdom,[3] and in 1186 Constance married his eldest son. It was an unwise step. It was one of the steps which brought his own dynasty and Germany to disaster. But it was an inevitable result of the imperial idea. The Saxon wars may have done much to give a southern direction to imperial policy, and the antagonism of the German races may have been a bar to a really centralized system of government, but the course of events was in the end shaped not so much by racial difficulties in Germany as by the vague and traditional desire for universal empire.

[1] Gervase, *Otia Imperialia*, SS. xxvii. 381.

[2] The marriage of Henry VI. and Constance was regarded by contemporaries as bringing about a restoration. Per hoc regnum Sicilie cum ducatu Apulie ... Romano imperio restituit, quod post mortem Lotharii quondam imperatoris a Rogerio, capto papa Innocentio regioque nomine ab eo extorto, imperio ablatum fuit (*Ottonis Fris. Cont. Sanbl.*, SS. xx. 317).

[3] William II. was but twenty-four years of age in 1178, but there was reason to suppose that he would be childless.

CHAPTER IV.

LEGISLATION IN GERMANY.

THERE was a moment in the history of the German races when it seemed as if they were destined to receive some abiding measure of discipline and direction from their rulers. During the Carolingian Age several causes contributed to augment the power and to stimulate the initiative of the German king. The sordid and internecine struggles of the Merovingians had worn themselves out, and fresh spiritual impulses, alike from Celtic and from Latin fountains, passed over the Frankish race, and gave to their wars all the energy which belongs to the propagation of faith. The menace of the Saracen conquests required and created a military and centralized administration, and in the House of St. Arnulf, the plastic German world found a dynasty of rulers, who, from their astounding energy and talents, were in a position to give to it some portion of that administrative direction, which the citizens of Rome had been in the habit of receiving from their emperors The capitularies of the Carolings deal with almost every question of administrative interest. They regulate weights and measures; they attempt to create a monopoly in favour of royal mints; they treat of roads and bridges and royal domains, of the administration of justice and finance, of trade, of the church,

of education. Many of them—the *Capitula Missorum*—contain detailed instructions for the royal *missi* or agents. Most of them—the *Capitula per se scribenda*, the *Capitula Omnibus Legibus Addenda*, and the *Capitula Missorum*—are valid over the whole immense area of the Frankish empire, and form a body of administrative territorial law, which is obeyed alike in the plains of Westphalia and the forests of the Pyrenees, among the Goths of the Garonne Valley, the Burgundians of the Rhone, the Lombards of the Po, and the Bavarians of the Danube. Yet the capitularies are revelations of administrative energy rather than of legislative design. They are temporary expedients, not circumspect monuments of reflective thought, for there was never an idea of creating a systematic law-book for the guidance of the Frankish administrator. The instructions issued were meant to serve the need of the hour. They bear evident marks of haste; they lack order and arrangement; spiritual and temporal provisions, rules as to monastic discipline, royal benefices, military service, unlawful tolls, jostle one another in unconscious confusion, and it is only the purely military capitularies which bear the traces of anything like systematic planning. Again, new capitularies repeat the provisions of old ones, and it is apparently the custom for a new king upon ascending the throne expressly to confirm the edicts of his predecessors, as if without this formality the force of a capitulary would expire with the life of its author.

It must also be remembered that the capitularies are not regarded as laws. Law, according to the old Germanic conception, was a popular, not an imperial, product. It was made with the making of a people, it was declared by the voice of the people, it was put

into writing with the consent of the people. The laws of the Ripuarian and Salian Franks, of the Lombards and the Bavarians, of the Saxons and the Swabians, were laws in this popular and primeval sense. A man carried his law with him as his inalienable inheritance—he lived his law. The early legislator, who attempts to violate these ancient customs, takes upon himself a mighty risk. He may gather taxes with impunity, in person or in purse, for his campaigns and for his luxuries, but he may not lightly touch the customs of his race. Procopius tells a story of a Persian despot, who misgoverned his people in security until he touched their marriage customs,[1] and the fall of the Lombard king Ratchis is largely explained by the fact that he attempted to force some portion of the Roman law of marriage upon the Lombard race.[2]

The minds of the Carolings were hospitable to Latin influences, but, notwithstanding, the Carolings were Germans. The family of St. Arnulf professed Ripuarian law; and though Charles the Great, after his imperial coronation, certainly cherished the scheme of fusing the law of the Salian and Ripuarian Franks, and Agobard, a Frankish prelate of Lyons, wrote to Lewis the Pious to ask him to declare the Frankish law to be law for the whole empire, no such process of legal unification was, as a matter of fact, undertaken.[3] Indeed, nothing is more remarkable than the extreme

[1] *De Bello Persico*, i. 5, ed. Bonn, i., p. 25.

[2] *Chronicon Benedicti*, SS. iii., p. 702, "Accepit Rachisi uxorem de hurbem Roma nomine Tassia et disrupit lex paterna Langobardorum: morgincaph et mittio que in suis legibus affixum est non adimplevit. Fecit autem donationes cartule Romane, sicut ipsi Romani petierunt: propter hoc Langobardi irritati adversus Rachisi rex et tractantes cum Astulphus de regno eius."

[3] Brunner, *Die Geschichtlichen Grundlagen der Deutschen Rechtsentwickelung* [Holtzendorff's *Encyklopädie der Rechtswissenschaft*, p. 204].

care taken by the monarchs of the Caroling House to maintain the distinction between the capitularies and the laws. Whereas the capitularies are royal and temporary and administrative, the laws are popular and durable and regulative of the civil relations between individuals. When, as sometimes happens, the emperor wishes to add capitularies to the laws, and to incorporate them as law, a special process is undergone. The consent of those who live the law in question has to be obtained; a committee seems to have been elected from their number to consider the terms of the proposed additions, and to report upon them; and it is only when popular assent has thus been obtained that *Capitula Legibus Addenda* can be considered as *Legibus Addita*, or as *Leges*.[1] It is not the monarch who legislates in the final instance. It is the voice of a Germanic people declaring certain provisions to be consonant to the temper of their ancient law.[2]

It would be wrong to consider this scrupulosity upon the part of the Carolingian kings as in any way either singular or hypocritical. They were neither revealing a strain of weakness or eccentricity, nor were they masking a despotism under popular forms. They were

[1] *Cap. Agwisg.*, 820, sect. 5 (Boretius, i., p. 295), "Generaliter omnes admonemus ut capitula quae praeterito anno legis Salicae per omnium consensum addenda esse censuimus, iam non ulterius capitula, sed tantum lex dicantur, immo pro lege teneantur."

[2] For the vexed question as to the relation of law and capitulary, cf. Thévenin, *Lex et Capitula* (*Bibliothèque de l'Ecole des hautes Etudes*); Schröder, *Deutsche Rechtsgeschichte*, pp. 117, 249; Esmein, *Histoire du droit Français*, pp. 72, 75; Fustel de Coulanges, *La Monarchie Franque*, c. vi.; Fustel de Coulanges, *De la confection des lois au temps des Carolingiens* (*Révue Hist.*, iii. 3); Boretius, *Beiträge zur Capitularien Kritik*, pp. 1-69; Glasson, *Droit et Institutions de France*, ii., pp. 449-61; Jenks, *Law and Politics in the Middle Ages*, pp. 16-21; Waitz, *D. V.G.* iii., p. 331.

merely acting as Germans had always acted and were always expected to act. They were merely exhibiting the truth that Rome had not yet conquered its conquerors, and that if you scratched the Roman emperor you would find beneath the German tribesman. The Carolings, then, respect the tribal laws as they respect the Roman law. They deal with the laws tenderly, in the traditional manner. One of them boasts, as the Gothic emissary boasted to Belisarius, that neither he nor his predecessors had attempted by any capitulary to alter the Roman Law. And the boast would have been true of the Lombard law as well. And so the Carolingian legislation is almost entirely administrative and perishable, made for the needs of every day, and consequently not preserved by the morrow. The social state of the German world was left unaffected by these interesting ordinances, which were so universally defied, and so rapidly forgotten, by the end of the tenth century the German youth had ceased to study a legal literature which had long become inapplicable.[1]

Yet in spite of all this, the Carolingian Age leaves a deep and lasting print upon Germanic law. This is not due so much to conscious purpose,[2] or to intellectual

[1] *Chronic. Ebersp. Saec.*, xi., SS. xx., p. 14, "Cum Romani terrarum orbi imperarent, ita moderamine legum scripto regebatur, ut nulli impune cederet factum, quod lex vetuerat. Postquam vero Germanum regnum a Romanis recesserat, Sigipertus et Theodericus ac deinde Carolus jura dictabant, quae si quis potens ac nobilis legere nesciret, ignominiosus videbatur, sicut in me coevisque meis, qui jura didicimus, apparet. Moderni vero filios suos neglegunt jura docere." The capitularies, of which there were two incomplete collections, were studied up to the end of the tenth century, as monastic catalogues show, but probably more attention was devoted to the *Breviarium* of Alaric, and the Alamannian and Salian laws, of which there were many examples at Reichenau (Stobbe, *Geschichte der deutschen Rechtsquellen*, i., 231-255).

[2] An exception may perhaps be made. There was one change due

originality finding an outlet in legislation, as to the fact that for a considerable period of time a vast empire was being vigorously governed upon common administrative principles. Such a fact is more influential than all the codes. In the fruitful atmosphere of administrative vigour, a whole stock of cognate and congenial principles, which had been starved or strangled in the bare climate of anarchy, suddenly sprung into luxuriant growth. They are not new principles, but they are now for the first time applied upon a sufficiently large scale, and with sufficient vigour to cut their way deeply into the legal system. The mere working of an administrative system excites in this manner an indirect legislative effect of the greatest importance, and perhaps of a higher degree of durability than can be exerted by any single creation, however ingenious, of legislative fancy. In some such way as this the Caroling Age, ripening many principles which had been immature, left its mark upon three departments of Germanic law—upon criminal law, upon the law of procedure, upon the law regulating judicial organization. And this mark is found printed evenly upon all the Germanic codes, except upon the Lombard code, which has indeed been affected by the process, but which has been affected in a lesser degree.

The importance of the Carolingian monarchy is perhaps most easily recognized in the department of criminal law. From a very early period the system of the German common law, by which crime was atoned for by compensations paid to the injured man or to his family, had been confronted with another

to direct ecclesiastical influence. Heathen formulas were replaced by Christian formulas, and the Church got hold of the ordeals (Brunner, p. 286).

system, sprung from an entirely different source, by which crime was punished by the king's ban, that is to say, by a money payment to the king as head of the state. The compensation was popular, was limited, was traditional, was sanctioned by law. The ban was royal, was unlimited, was original, was sanctioned by an administrative order or capitulary. It can easily be imagined what revolutionary possibilities for criminal law lay sheathed in this simple expedient. It had only to be used frequently, widely, systematically, and the most fundamental conceptions of criminal law would be subverted, offences would be considered as crimes against the king not as injuries to the individual or his family, the king would be considered a fountain of justice, guardian of order, protector of the weak, the individual would be segregated from his group and brought face to face with the majesty of the state. The Carolingian administration was not sufficiently durable to work out all these implications, but a large extension was given to the number of offences which incurred the royal ban, and the connection of the monarchy with the administration of criminal justice was emphasized in such a way, that it was not effaced in Germany until in the course of the thirteenth century the custom of receiving the *banleihe* from the king gradually died out.

The changes in legal procedure, stimulated by the vigorous practice of the Carolings, are of an analogous nature, for they tend to emphasize the power of the crown. The old procedure of the *mannitio ad mallum*, the summons to the court issued by one of the litigants to the other, the effect of the issue of which is that both parties are bound to appear on pain of a penalty of fifteen *solidi*—this old popular process is supple-

mented and eventually superseded by the *bannitio*, by the summons issued to the parties by the king's letter and the king's seal. By the end of the Carolingian Age the *bannitio* has become the regular means of instituting proceedings at law. Again there are other ways in which the influence of the royal agent or *comes* who presides over judicial procedure is increased. A new and specially royal method,[1] instituted by royal writ (*brevia* or *indiculi inquisitionis*), the inquisition by sworn witnesses chosen by the royal official to investigate the facts of the case, is applied with increasing frequency in the Carolingian Age, both to criminal, administrative, and civil causes. Royal confiscation, while it paves the way to the distraint of immovable property, which earlier forms of communal holding or cultivation had rendered impossible, makes an important addition to the executive powers of the court of law, while the appeal to the crown (*reclamatio ad Regem*) tends at once to feed the fountain of royal equity, and to render obsolete the cumbrous and barbarous practice by which the litigant used to impugn the verdict of a judgment-finder.[2]

The Frankish conquests, too, carried in their wake the judicial organization of the Franks, the most essential feature of which was that justice was done by the count, a royal official, assisted by a local committee of seven assessors [*Scabini Schoffen*]. In Saxony, in Bavaria, in Swabia, these Frankish methods are sown widely, powerfully, and fruitfully. The hard-won conquest of the Saxon race, the abolition of the

[1] Several churches had the privilege to hold inquisitions formally given them. The royal *missi* also had power to hold inquisitions: also the *fisc*. Brunner, *Schwurgerichte*, pp. 76-126.

[2] For the contrast between the appeal and the judgment-blaming (*Urtheilschelten*), Brunner, *ib.*, p. 73.

Swabian duchy, the plantation of a Frankish dynasty in Bavaria, the wide diffusion of the imperial estates, the support given by the Christian Church to the Frankish dynasty, assist the process, and the result is such that the most brilliant of Germanic legal writers has maintained that the Swabian and the Saxon law books of the thirteenth century are nothing but dialects of the law of the Salian Franks, nothing but unimportant local varieties upon a uniform growth of Frankish law, which was planted widely and designedly by the powerful initiative of the Frankish court.[1]

A detailed investigation of the attitude adopted by the Frankish kings to the various Germanic codes of law shows that one part of this conclusion cannot be accepted. It was neither the design nor was it the accomplishment of the Carolingian House to abolish local customs or to create a uniform code of Frankish imperial law. That may have been an idea for ecclesiastical dreamers, it may have been debated in the circles of Agobard of Lyons, but it was not practical politics. Local custom survived and flourished, but it was profoundly modified by the Carolingian administration. The Bavarian and the old Swabian *judex* make way for the Frankish count and his assessors. The king's ban stands at sixty shillings, the penalty for violating an immunity at six hundred shillings all over the empire.[2] The *bannitio* or royal summons to the party, the appeal, the inquisition by witnesses, the execution through a *missio in bannum* have taken their place in German legal procedure. The conception of royalty has received new content. The

[1] Söhm, *Frankisches Recht und Römisches Recht*, *Z.R.G.*, vol. xiv.

[2] *Cap. Sax.*, 797, sect. 3 [Boretius, i., p. 71]; *Cap. Ital.*, 801, sect. 2 [Boretius, i., p. 205]; *Cap. Leg. Add.*, 803, sect. 2 [Boretius, i., p. 113].

king is the guardian of his people, and their supreme judge.[1]

How far did the mantle of the Carolingian emperors descend upon their Saxon, Franconian, and Swabian successors? To what extent did they attempt to legislate for the German people, or to affect the course of German law? In what sense were they—nominally the Roman emperors—the real depositories of the Roman legislative tradition?

In the interval between Charles the Great and Otto I. social and economic changes came over Germany which not only rendered the old written legislation inapplicable, but screened off, so to speak, a large area of private life from the supervision of the central power. The growth of the feudal system brought in its train new legal conceptions, and developed three new groups of customary law, the law regulating the relations of fief holders to their lords (feudal law proper or *Lehnrecht*), the law regulating the status of the lords' unfree personal servants (*Dienstrecht* or *Ministerialenrecht*), and the law or custom of the manor (*Hofrecht*). If we add these to the pre-existing provincial customs, the *Landrecht*, and to the municipal laws which grew up within the towns out of unwritten customs and charters or constitutions, we have no less than five different types of law, each ramifying into many local varieties co-existing together in Germany, administered by five different types of court. The feudal law is both made and administered by the lord and his fief-holding vassals; the ministerial law, by the lord and

[1] As Söhm brilliantly says, "Das Deutsche Obervormundschaft ist gleich der Römischer nicht aus dem Volksrecht sondern aus dem Amtsrecht hervorgegangen" (*Frankirches Recht und Römisches Recht*, *Z.R.G.*, xiv., p. 145).

his *ministeriales;* the manorial law, by the manor court; the provincial or land law, by the public court of the land; the town law, by the court of the town. Now, there were two ways in which the German kings might influence the course of these various streams. They might influence them indirectly, and they might influence them directly; indirectly by the formation of a strong and popular and professional royal court, directly by active legislation, either for the empire as a whole or else for different parts of it.

The history of England is the standing example of the success of the indirect method. The *Curia Regis* of the Norman and Angevin kings makes the common law of England, which has conquered half the civilized world. The German kings were like the Norman dukes, inheritors of the Carolingian tradition, but the tradition was fainter, the conditions more difficult, the men less skilful and less civilized. A comparison between the history of the medieval imperial court and of the *Curia Regis* of England reveals the secret of the long political disunion of Germany. One point, indeed, there is in common between the German and the English rulers. They both exhibit an energy which is positively astounding. Their itineraries show them restlessly moving from place to place; and if the English and German accounts were compared, the balance of energy and the balance of travel would certainly be on the German side. In all the long succession of imperial figures, from Otto I. to the boy Conradin, there is not one *roi fainéant*, not one king who, like Edward II., was purely a man of pleasure. Disease and physical weakness stay them not; the burning suns or the unwonted fruits of Italy may demoralize the soldier, but no emperor ever abandoned

himself, amid the delights of the south, to a Capuan ease, or lost the sense of his imperial mission.[1]

Nothing is so fatal as mere energy. It masks a thoughtless routine with a false show of purpose. The German king, at his coronation service, swore that he would strengthen law and weaken unlaw, and protect the *Reich* in all its rights. The people and the chroniclers, who record the common sentiment, estimate a reign by the justice of the king. If he punished robbers severely, and kept the peace, and paid attention to the complaints of the poor, and never took a bribe, then he was a good king. "He did not pay much heed to the judgments of the kingdom," says a writer of Henry V. "He was indeed lord of the realm, in his day the peace was good," says the *Kaiserkronik* of Lothair.[2] The most striking legends concerning the emperors have reference to their administration of justice, for nothing is so impressive in a rude society as the alliance of impartiality with strength.[3] From the first moments of his reign the king puts on the attributes of the judge. When Conrad II. was drawn from the palace to the Cathedral of Mainz to receive consecration, three low-born persons — a peasant, a widow, and a waif — forced themselves through the crowd and called upon the king for justice. The king stopped the procession, saying to some bishops who

[1] *Chron. Reg. Col.* 1137, "Merito a nobis nostrisque posteris pater patriae appellatur quia erat egregius defensor et fortissimus propugnator nihili pendens vitam suam contra omnia adversa propter justitiam opponere."

[2] Ed. Massmann, 17182. For a collection of verdicts upon the imperial administration of justice, cf. Franklin, *Reichshofgericht*, vol. i., pp. 2-4.

[3] Cf. Godfrey of Viterbo Pantheon, 29-31 [SS. xxii., pp. 235, 238, 239], and Gobelinus, *Persona Cosmodromii Aetas*, vi., xlviii. The statement he ascribes to Otto I., "Bi Ottenbarde he moth barden schmecken," has a convincing ring.

would have him advance, "Since I have been chosen to be a ruler, and since a brave man never puts off doing what he can do at the right moment, it seems to me better to do my duty at once than to receive instruction in it from others. You have often said to me that it was not the hearer of the law that was blessed, but the doer. The harder the office which I am to undertake the more careful must I be to walk in God's ways." The king did not move on until he had helped the suppliants to obtain their rights. And scarcely had he done this when another man broke into the procession, crying out aloud that he had been unjustly driven from his home. The king took him by the arm, drew him aside, and recommended his case to the princes.[1] It is in this homely and hospitable spirit that the German king administers justice. Instead of organizing labour on the great highway which is to lead from chaos to order, he takes up the pick himself, and works devotedly with his face to the ground.[2] Royal justice was the personal justice of the king. It was what the king, with the assistance of his princes and nobles and general entourage, could get through in the day, and how many of the days were broken by travel or consumed in war? There was no judicial capital, there was no professional staff. The justice of the king hurried up and down the kingdom, restless as the flying Hollander of German story. When the king sat in judgment his court super-

[1] Giesebrecht, *K.Z.*, ii., p. 224; cf. *Sachsenspiegel*, iii., 33, 1.

[2] *Chronica Regia Col. ad* 1107, "Inde Merseburg postea Goslariam adiit omnibus super causa sua eum pulsantibus regio more judicans"; cf. Frederick I.'s promise to the Pope [Weiland, i., No. 137], "Juxta professionis nostrae formulam viduis ac pupillis ac universo populo nobis commisso legem et pacem faciamus et conservemus"; cf. also Frederick II. on the right of poor persons to be heard in the supreme court, "Miserabilium personarum quarum est privilegium forum eligere" [*H.B.*, vi., p. 158].

seded all other courts, determined all undecided pleas, judged all uncondemned prisoners. It was both a court of appeal and a court of first instance, nor was there any limit to its jurisdiction.[1] But the task of seeing that every man got his rights was, as Conrad observed, a work of enormous difficulty. It could clearly only be performed by a large exercise of delegation. It required a strong central permanent court, with a professional band of royal judges, fixed and itinerant. But such a court was never formed.

The king's court can have exerted but little influence in shaping the course of German law. In the first place its composition was arbitrary and fluctuating. It was composed of such princes as happened to be present with the king on any particular occasion, and the judgments were declared by one of the princes on the demand of the king. There was no professional experience in the court except in matters of canon law, in which some of the ecclesiastical princes might be versed. Intrinsically its decisions would be likely to be less influential than the decisions of the county courts, which were given by a permanent band of assessors, in some cases nominated for life, and in all cases closely in touch with the spirit and temper of their local customs. It is also one of the singular and most illustrative facts in history that in spite of the long political connection between Germany and Italy, despite the fact that the basis of the theory of medieval imperialism was laid in Roman law, that several important towns boasted of having been founded by the Romans and of having received Roman

[1] The king of course would, as a rule, not interfere with matters which strictly belonged to ecclesiastical law. Cf. Franklin, *Sententiae Curiae Regiae*, xxii., "Diffinitum est quod Romanorum Rex jus debeat reddere de omnibus questionibus civilibus et criminalibus."

institutions,[1] no knowledge of Roman law was at all generally current in Germany until after the foundation of the German universities in the middle of the fifteenth century.[2] The first Germans who attended Italian schools between 1230 and 1270 were, so far as our evidence goes, without exception theologians, who, if they studied law at all, worked with the canonists rather than the glossators. The first German writer who approached the study of German law with some thorough knowledge of Roman principles in his head was Nicholas Wurm, the glossator of the *Sachsenspiegel*, who had studied Roman law in Bologna, and whose work belongs to the early years of the fifteenth century.[3] There was no German influence at the royal court comparable in character to the influence exerted by the author of the *Tractatus De Legibus Angliae*. The author of that famous treatise, the first classical text-book of English law, written at the close of the reign of Henry II., had, we are told, imbibed something of the spirit and harmony of Romano-canonical jurisprudence. He had a conception of law as a scientific system,[4] although he was certainly concerned with the practice of law in the king's court.

[1] *Gesta Trevirorum*, c. 8, "Tunc etiam Treberi Romana jura et leges habere ceperunt quas usque in hodiernum diem tenere noscuntur" [*i.e.* to the beginning of the twelfth century], SS. viii., 135.

[2] The sparse indications of the application of the Roman law in Germany during this period have been collected by Schäffner, *Das Römische Recht in Deutschland während des zwolften und dreizehnten Jahrhunderts*; cf. also Conrat, *Geschichte der Quellen und Literatur des Römischen Rechts*, p. 5. The earliest traces of Roman law in German charters belong to the reign of Conrad III. [Schäffner, p. 14], but there was clearly no attempt on the part of any emperor to introduce Roman law into Germany.

[3] Stölzel, *Die Entwickelung des gelehrten Richterthums*; Stobbe, I., 374; Brunner, *Z.R.G.*, xxii., 251. A new edition of the glosses is being prepared by Steffenhagen; Schröder, p. 639, n. 28.

[4] *H.E.L.*, i., pp. 113, 141-5.

But no German lawyer attached to the emperor's person has left a sufficient reputation to have a legal work ascribed to him. When the glossators of the fourteenth century were seeking to find authority for two private books, written by an obscure Saxon upon Saxon law, they attributed the Saxon *Landrecht* to a privilege of Charles the Great, and the Saxon *Lehnrecht* to an edict of Frederick Barbarossa.[1] There was no German analogy to Ranulf Glanvill or Hubert Walter, and the procedure and practice of the king's court was untouched by the quickening breath of Roman jurisprudence.

There was another reason why the king's court did not exercise any important influence over the course of German law. Like the chameleon, it changed colour with the surface over which it travelled. When the king came into the Saxon territory, Saxon litigants would flock to his court, and his court would be mainly composed of Saxon nobles and princes. The law administered would be Saxon law, the judgments would be found by Saxons,[2] the principles would be the traditional Saxon principles. In Swabia the court would be mainly Swabian; in Bavaria it would be mainly Bavarian. It was a rule that outlawry could be proclaimed, and trial by battle resorted to, only in the land of the accused person.[3] If an appeal was made against the judgment of a local court, it could not be brought to

[1] Homeyer, *Sachsische Lehnrecht*, pp. 49, 50.

[2] *Sachsenspiegel*, iii., 33. 2, "Iewelk man mut ok antwerden vorme koninge in allen stedten na sime rechte und nicht na des klegeres rechte." Cf. also Henry IV.'s proceedings in 1070, "Postera die rex principes Saxoniae quod ex his oriundus esset et hi propter privatas inimicitias maxime invisum eum haberent, sententiam super eo rogavit." *Lamberti Annales*, SS. iv. 177; and Franklin, *Sententiae Curiae Regiae*, lvii.; *M.B.*, xxix., p. 124, 1055, "Et ob hoc secundum legem Bavariorum in nostro colloquio diffinitum est."

[3] *Sachsenspiegel Landrecht*, iii., 33. 3.

the king until he had arrived within the legal territory in which the court was situated. "When the king first arrives on Saxon soil, then shall they [the litigant who quarrels with the judgment, and the messengers of the judge] fare to the court, and within six weeks afterwards they shall bring back the judgment."[1] So, too, no one need answer for his property except in the land in which the property lies, and when the king comes into that land he must decide according to the law of the land, not according to the law lived by the litigant.[2] If the property were situated in Saxony, the witnesses and the judgment-finders must be Saxon, and it would be inconvenient to try the case anywhere else. As a rule it may be assumed that the royal court was inclined to respect the legal frontiers.[3] If a man lived Swabian law, then he might claim to be tried in the land of his birth—the *terra nativitatis suae.* This does not mean that he has a right to be tried in the place in which he was physically born. The birthplace, the home, the *Handgemal* of German law is not the place in which a man is actually born, but the place in which, for legal purposes, he is assumed to be born. It is the residence of his family in the eye of the law. There is curious evidence to prove the tenacity with which a German family professes the law of its original home centuries after it has migrated to a different locality. In the middle of the thirteenth century Eike of Repgow can enumerate all the families who are living Swabian

[1] *Sachsenspiegel Landrecht,* ii., 12. 4; iii., 26. 2.

[2] *Ib.*, iii. 33, sect. 3. The glossator remarks, "Everyone has, in the land of the Saxons, the law of the land, and not his own born law, from wheresoever he may come. Since the privilege is given to the land by the empire, and not to the people who live in it."

[3] Franklin, *Sententiae Curiae Regiae,* cccxxiv.; *Epist. Wibaldi,* No. 239, ed. Jaffé, *Bibl. Rer. Germ.*, p. 359, "Iudicio gentis suae et curiae nostrae."

law in Saxony. Among these families he mentions *Die von Braunschweig*, the Brunswickians.[1] Now, the Brunswickians were a branch of the Welf family, who, in the tenth century, had estates in two places in Swabia, Altdorf, and Ravensburg. These estates were still demonstrably in Welf hands at the end of the twelfth century,[2] but from the time of Welf III. [1055] onwards the main possessions and dignities of the family cease to be bound up with Swabia. Welf III. is Duke of Carinthia; Welf IV. is Duke of Bavaria; Henry the Black, Henry the Proud, Henry the Lion are all dukes of Bavaria. Henry the Lion is also Duke of Saxony. Though the family migrates from Swabia to Bavaria, from Bavaria to Saxony, it still retains, in the middle of the thirteenth century, the law of its *Handgemal*, it still lives the Swabian law which was connected with two old castles built by an obscure ancestor three hundred years earlier, though one of them had been given to a monastery, and the other had long ceased to be the centre of the family domains.[3]

Such a fact is not without eloquence. It speaks

[1] *Sachsenspiegel Vorrede*, and cf. the *Luneberger* or *Repgauer Kronik*, 1219 [Eccard, *Corp. Hist.*, i. 1402], which says of the son of Henry the Lion, "Dat is wol witlic dat he nen Swaver ne was, wanne en recht Swaf van allen sinen elderen."

[2] Hess, *Mon. Guelf.* pp. 31, 50, 54; Adler, *Herzog Welf VI.*, p. 159.

[3] Homeyer, *Über die Heimath nach altdeutschem Recht. Abh. d. Berlin Ak.*, 1852, pp. 17-104. The castle of Altdorf had been ceded to St. Martin in 1053, though the Welfs still retained estates in the neighbourhood [*Mon. Guelf., ad loc. cit.*]; cf. also the remarkable case in Ughelli, *Ital. Sacra.*, iv. 781; Grimm [*Deutsche Rechtsaltherthümer*, p. 399] remarks on the late survival of personal laws, "According to a *Landgerichtsbrief* of 1455, the Nuremberger judge must stand on Frankish ground, beyond the bridge on the Neuenstadt road, when outlawing a Frank; on Swabian ground, beyond the stone bridge on the road to Onolzbach, when outlawing a Swabian; on Bavarian ground, before the *Frauenthur*, if it be a Bavarian. If it be a Saxon, before the *Thiergarthenthur* on the road to Erlangen."

to the absence of any strong central jurisdictional control. Yet the emperor's court must often have felt the inconvenience of respecting claims based upon the *Handgemal.* There is an interesting story told by Burchard of Ursperg concerning the trial of Henry the Lion in 1178, which illustrates the point. "The emperor," he says, "frequently summoned the duke to court to answer objections. Then some princes and barons who favoured the duke, and who, like Teutons, reck not right or reason, but take their own pleasure for law, wished to maintain that the emperor could not condemn the duke, or confiscate his lands, unless he held the plea within the lands of the duke. Then a certain noble rose up and made the following proposition: He wished to maintain, by the duel, against any man who would fight with him, that the emperor could summon any prince to justice to any place he might wish within the boundaries of his empire. And as no one offered himself to battle, the aforesaid sentence was issued by an edict of the emperor as perpetual law."[1] In the same sense Frederick II. rules: "The court of Germany is where our person and the princes of our empire are found."[2] The Italian wars of Frederick Barbarossa and his successors, and the attractiveness of the court of the later Hohenstauffen may have done something to weaken the strong local tendency, which is embodied in the claim to be tried *in loco nativitatis.* German cases are frequently dealt with in Italy, so long as there are Germans in attendance upon the emperor to find the judgment. The town of Cambray was, in 1209, condemned by an

[1] *Burch. Ursp.*, SS. xxiii., pp. 357, 8; Franklin, *Reichshofgericht*, vol. i., p. 93 ff.

[2] Franklin, *Sententiae Curiae Regiae*, xxii.; *H.B.*, ii. 630; Weiland, *Constitutiones et Acta Publica*, ii., No. 106.

imperial verdict given at Augsburg.[1] Again, no geographical considerations restricted the imperial court in its treatment of feudal cases, for feudal law was not the manufacture of a province, but of an aristocracy which centred in the person of the king. At his first diet of Rencaglia in 1154, Barbarossa deprived two German prelates of their regalia by a judgment of the court.[2] At least in its character of a supreme court of feudal law, the imperial tribunal transcended provincial distinctions. Yet it is curious to observe how, in spite of all this, the old tendency reasserts itself irrepressibly. When Henry VII. outlaws some Bavarians at Worms in 1222, he adds a clause, "Notwithstanding that we are not in the Bavarian land."[3] He foresees that an objection will be taken to the legality of the imperial proscription, and he goes out of his way to meet it. The manner in which he meets it, too, is instructive, not by any general declaration of imperial omnicompetence, but by a *non-obstante* clause, which implies that in general he is willing to respect a rule, which in this particular instance he is determined to violate. At the back of the legal consciousness of the German lay the assumption that the imperial justice was a travelling concern, and the emperor some benign and fatherly packman industriously bringing his wares to the very doors of the litigant.

There was another reason, and it is a most characteristic reason, for the extremely slight formative influence exercised by the royal court, and this was the rigour of the social hierarchy in Germany.

In the time of Charles the Great, Einhard remarked

[1] Schröder, *Deutsche Rechtsgeschichte*, p. 533, n. 23.
[2] Otto Fris., *Gesta Frid.* ii., c. 12.
[3] *M.B.*, xxxi., p. 510; Weiland, ii., No. 278.

upon the extremely stubborn nature of the caste system prevailing among the Saxons, and although the social stratification underwent many changes before the close of the thirteenth century, and class outlines were undoubtedly somewhat blurred by the influence of the Church and of trade, yet the spirit of caste was never exorcised. Nothing can illustrate this more clearly than the curious feudal rules of the Heerschild, which are formulated in the law books of the thirteenth century.[1]

The objects aimed at by these rules are two in number: in the first place, to define the true fief and the true fief-holder, and to mark off the holders of true fiefs from the holders of all other kinds of property; and in the second place, to establish distinctions between the various ranks of the body whose limits had been so defined. Thus the word Heerschild, which literally means a military shield, denotes two things—the capacity of holding a true fief, and a rank possessed by a person who enjoys that capacity. A true fief must be a military fief. It must be held directly or indirectly of the emperor; it must imply homage and imperial military service. Again, a true fief-holder must be a man of knightly birth and of knightly life. Only such a one is Volkommen an Lehnrecht, is in possession of the full Heerschild. Townsmen and peasants, clerks (with the exception of spiritual princes and imperial abbesses), stand outside the charmed circle. They can hold fiefs, but the fiefs are not burdened by military service, are not true fiefs. Unfree knights of the rank of *ministerialis* stand outside the circle till the middle of the twelfth century. Until that time they were only

[1] For all that concerns the Heerschild, the reader is referred to Ficker's famous monograph, *Von Heerschilde*, in which the theories of the law books are most beautifully tested by charters, the historian's arms of precision.

capable of receiving fiefs of service of their lord; they did not possess the Heerschild; they did not belong to the circumscribed military aristocracy, whose fiefs were true and descended by strict feudal law. Again, within the circle of those who possessed full feudal capacity the grades were carefully marked. Originally the Heerschild in Germany consisted of three ranks: the king, the princes, the free lords (Freie Herren, Valvassores). In the time of Frederick Barbarossa the free *ministerialis* entered as a fourth rank. Then the unfree knights came as a fifth rank, while finally the Heerschild of the princes was divided into the Heerschild of the temporal, and into that of the spiritual princes.

The details of the hierarchy vary from place to place, and there is great variety and uncertainty as to the order and composition of the lower ranks,[1] but the principle remains the same.

[1] On the whole the Heerschild is laid most stress on in Saxony, where the king has no ecclesiastical fiefs, where no fiefs are received from foreign kings, where there are no mediatized bishops, and where the spirit of caste has always been strong. Tables may be drawn out to illustrate the hierarchy in different provinces:

SWABIA.

1. King.
2. Spiritual Prince.
3. Lay Prince.
4. Hoch Freie.
5. Mittel Freie.
6. Dienstmann.

LORRAINE.

1. King.
2. Enfeoffed King.
3. Spiritual Prince.
4. Mediatized Bishop.
5. Lay Prince.
6-9. Nobles of three different classes.
10. Unfree Knights.

EAST SAXONY.

1. King.
2. Spiritual Prince.
3. Lay Prince.
4. Freie Herre.
5. Schoffenbare People and the Men of Freie Herre.
6. Their Men.

WESTPHALIA.

1. King.
2. Spiritual Prince.
3. Lay Prince.
4. Freie Herre.
5. Freie Herre.
6. Schoffenbare People and the Men of Freie Herre.
7. Their Men.

Cf. Ficker, *Von Heerschilde*, and Schröder, p. 389.

A man who received a fief from any person of his own or of an inferior rank lowered his Heerschild; his descendants held at the goodwill of the overlord, and the consequences of his action extend to the third generation. If a man who has the Heerschild receives a fief from one who has not got the Heerschild, for instance from a clerk or a woman, then the fief may not be transferred to another lord. It is unnecessary further to enter into this elaborate scheme of feudal precedence, which was worked out in the course of the twelfth and thirteenth centuries, and which became obsolete in the fourteenth century.[1] But it throws a significant light upon one peculiar weakness of the German judicial system. It was an old and originally not an unreasonable principle, that every man should be tried by his peers, that is to say, by his social equals. In a barbarous society men could not be expected to comply with the judgment of their inferiors, and the principle was undoubtedly a valuable safeguard against tyranny. But the whole history of the administration of law depended upon the construction put upon the word "peer." If equality was to be

[1] The spirit which presided over the formation of these rules is shown in Frederick I.'s *Constitutio Contra Incendiarios*, § 20, which forbids sons of priests, deacons, or rustics taking the military belt (Weiland, *Constitutiones et Acta Publica*, i., No. 318). The various devices adopted in order to avoid lowering the Heerschild show that the rules possessed reality (Ficker, p. 8). They are as follows:

1. A holds of B and wishes to enfeof his peer C. / A resigns to B. / B enfeofs C. } *Auflassung an Herrn.*
2. A enfeofs men of C. / Men of C allow A the fruits. } *Scheinlehe.*
3. A holds of B. / A stands [*lehenträger*] representative of the fief to C till B enfeofs C. } *Halten zu treuer Hand.*
4. A holds fief of B. / A sells allod to C. / B transfers allod to C. } *Herbeilassung zu Eigen.*

strictly regulated by nobility of birth, or by place in the feudal hierarchy, then the composition of a court would vary with every recognized grade of nobility and with every step in the feudal ladder. If the grades were many and the ladder was long, then there would be little chance of anything like the formation of a uniform professional class of judges; there would be little chance of the formation of anything like a systematic body of case law. In England justice was rescued from the clutches of this well-meaning but dangerous principle. The greater barons were but a comparatively small class; the judges of the exchequer came to be regarded as their peers, and the king's court of professional judges could always, by the addition of great nobles to its number, assume a form to which no magnate could take exception. But in Germany social distinctions were too many and too deeply marked to permit of so happy an issue. Even at Landrecht—which was less influenced by military etiquette—the principle thrives to the destruction of progress. In criminal cases no man need accept a social inferior as judge, judgment-finder, witness, or oath-helper. No man can impugn the judgment of his social superior. "No man may find a judgment concerning life, or limb, or honour over his lord, or over his man, or over his kin."[1]

To impugn a judgment you must be the equal or the superior of the judgment-finder. No one has the right to challenge to battle a social superior. No one can refuse the challenge of a superior. At Lehnrecht, too, the principle was at work. The court which decides a question of feudal law is constituted by the lord and his men. No one has a right to appear or to

[1] *Sachsenspiegel*, ii. 12. 1. The restriction, however, does not apply to cases where the king's ban was not necessary (*ib.*, ii. 12. 3).

take part in the proceedings who is not the lord's man,[1] and when the king holds his supreme feudal court, the judgment-finders are the tenants-in-chief. In practice, however, the principle of peerage does not seem to have been so strictly applied as the rules of the Heerschild and the rules of equal birth or *Ebenbürtigkeit* would seem to indicate.[2] In the thirteenth century the lawyers are saying that a freeman can be judge over everybody,[3] but this general principle is subject to limitations. No man, says the Austrian *Landrecht*, may give a judgment over another if he be his equal or superior (*Hawsgenosse oder sein Uebergenosse*), which affects life or honour or allod or fief.[4] Again, "the Dienstmann of the empire may not find or speak a judgment over a count or a freeman in three matters, that is to say, in matters which concern life, honour, or property.[5] It is clear, then, that in these classes of case the peerage rule is drawn with greater strictness. It is difficult, however, to say how far within these limits the rules of peerage follow the rules of the Heerschild. A person who does not possess the Heerschild cannot find a judgment over one who does possess

[1] *Sachs. Lehnrecht*, 67, sect. 1. *Mainz Landfriede*, sect. 20, "In omnibus tamen causis memoratis sit omnis testis liber, integri status et bone fame in causis parium principum et aliorum, sive inferiores ipso sint, etiam ministerialium. Ministeriales vero in causis ministerialium et inferiorum sed non in causis liberorum, rustice vero et servilis conditionis homines in causis non superiorum, set suorum parium admittantur."

[2] For this subject, cf. Göhrrum, *Geschichtliche Darstellung der Lehre von der Ebenbürtigkeit nach gemeinen deutschen Rechte*, pp. 98-109, 288-304; cf. too, *Gesta God. Arch. Trev.*, SS. viii., p. 203, where Godfrey of Cologne, accused of simony in 1127, at the Council of Toul, claims that since he is accused by none of his peers, he can purge himself single-handed. The claim is disallowed.

[3] *Sachs. Landr.*, ii. 12. 2; iii. 19, 69. 2.

[4] *Österreichisches Landr.*, ed. Hasenöhrl, sect. 9.

[5] Spangenberg, *Bruckstück eines mittelalterlichen Rechtsbuch*, i. 221.

it.[1] So much is certain. It is extremely improbable that any prince would consent to have a judgment found over him by any one who was not a prince;[2] and Frederick II., when constituting the office of justiciar in 1235, has to concede that cases involving the life, honour, or property of a prince shall be withdrawn from the competence of the justiciar, and reserved for his own royal hearing. It was a further question whether a Dienstmann could give judgment over a noble, or whether a noble could give judgment over a Dienstmann. There is a curious passage in the *Annals of Pöhlde* for 1146, which seems to throw some light on the question. It runs thus: "In this year a wonderful and hitherto unheard-of thing happened in the kingdom. For the *ministeriales* of the kingdom and the *ministeriales* of other powers came frequently to council without being bidden, and without consulting the king or the other princes, did justice in judicial wise when any body indicted them."[3] The passage seems to imply that the *ministeriales* in the time of Conrad III. generally refused to have judgment found over them by any one who was not himself a *ministerialis*, and it appears that this contention was made good. If a case arose in the royal court which concerned a Dienst-

[1] *Schwab. Lehnr.*, i., sect. 7, "Umb alles Lehenrecht mügen sy nit urteyl vinden, die des herschiltes mangunt."

[2] The princes claimed to be tried by the king alone. "Over der vorsten lif und ire gesunt ne mut neman richtere sin wan die Koning" (*Sachsenspiegel*, iii. 55, sect. 1; *Schwabenspiegel*, 106, 125). In the middle of the fifteenth century a contract was made between George of Bohemia and several German princes to the effect that if George were elected emperor of the Romans, he would appoint Duke Lewis of Bavaria and Palsgrave Frederick of Statthaltern to judge in all imperial causes, saving complaints against imperial princes which touched "their life and honour," for the king alone could judge of these (Hasselholdt-Stockheim, i., *Urkb.* p. 159; Franklin, *Reichshofgericht*, ii., p. 100).

[3] SS. xvi. 82.

mann, the king would naturally apply to a Dienstmann to give judgment, though the sentence would subsequently be confirmed by the whole court. And the same principle holds good in the court of the prince. "If the bishop blames his Dienstmann, he shall make answer before his Dienstmen."[1] So far the Dienstmen had been on the defensive. It was, however, a more difficult matter for them to conquer the right of finding judgment over nobles. It is true that about the middle of the twelfth century servile services drop out of the codes of *Dienstrecht*, that many noble born men began to enter the ranks of the Dienstmen; that the Dienstmen, before the end of the twelfth century, are pleading *Lehnrecht* in many of the abbatial and episcopal courts,[2] and that the visible social difference between a Dienstmann and a noble must have been microscopic. Still the spirit of caste is strong, and a question is now and again asked in the royal court which reveals its astounding vitality. For instance, in 1190 a question was asked in the king's court as to whether the Dienstmann of a prince could find a judgment in the company of nobles. The answer was a compromise. If one noble had found a judgment and had another noble to follow him, then a Dienstmann belonging to the family or advocacy of the prince might follow suit; otherwise not.[3] On the whole the general tendency of things was favourable to the Dienstmann. In 1222 a decision of the court of Henry VII., given at the request of the Duke of Lorraine and Brabant, lays down that a fief-holding Dienstmann may

[1] *Recht des Stiftes to Hildenseim*, sect. 9; cf. Fürth, *Ministeriales*, p. 526.

[2] In 1160 the Abbot of Fulda complains that his *ministeriales* are wriggling like eels, pleading *Lehnrecht* (Böhmer, *Fontes*, iii. 166, and Ficker, *Von Heerschilde*, p. 181).

[3] Franklin, *Sententiae Curiae Regiae*, cclvi.

give judgment in the case of a noble, but not in the case of a prince.[1] An imperial Dienstmann, such as Werner of Bolland, who had seventeen castles of his own, several villas, and the homages of one thousand one hundred knights, was in substance a petty prince.[2] Even the pedantic etiquette of the medieval German would not have gone so far as to insist that Werner could not find a judgment over a noble. It is further improbable that the lower subdivisions of the Heerschild were ever greatly respected, when the composition of the body of judgment-finders had to be considered. But with all these qualifications the principle of peerage had sufficient vitality to wreck any scheme for the establishment of a professional system of justice. When Frederick II., in 1235, decreed the appointment of the first professional royal judge for Germany, it was not sufficient for him to say that the judge must be a person of free condition. He had to promise that no case which concerned the person, the right, the honour, the fiefs, the property or inheritance of princes and other sublime persons should go before this free but professional person. He had to promise that these cases should be reserved for the royal hearing.[3] Germany was doomed to suffer many bitter things

[1] Weiland, *Constitutiones et Acta Publica*, vol. ii., No. 279.

[2] *Gislebert von Hennegau*, ed. Duchasteler, p. 127; Köllner, *Geschichte der Herrschaft Kirchheim-Boland.*

[3] Weiland, vol. ii., No. 196. 28. It seems to have been before now the custom that actions brought by the king of the Romans against a prince of the empire were referred to the Cont Palatine of the Rhine (Franklin, xxvi.). For later illustrations of the principle of peerage, cf. Homeyer, *Ueber die Heimath*, pp. 76, 77; cf. also Tengler, *Laienspiegel*, fol. ix. [1511], "So soll ein Ritter sein glimpf und eern allein vor ritterlichen Richten verantworten desgleich die edlen gefreyten und obern amptleut"; and the *Glosse zum Sächs. Landr.*, iii. 70, "Zu des Marcgraffen dinge da er über sein selbst gute leut richtet mag kein bauer urteyl finden."

before she obtained professional justice. When it came, it came like a thief in the night. With characteristic fidelity to a primitive instinct, she adopted in the fifteenth century the convenient but transparent fiction that a doctor of laws was a noble.[1]

It must be remembered, too, that the proceedings of the royal court were not preserved in writing, at any rate till the thirteenth century. Indeed Frederick II., in the Peace of Mainz, 1235, is the first emperor to suggest the necessity of a permanent judicial record. The justice appointed by him, under the twenty-eighth clause, was to be assisted by a special notary, who was to write down the name of the proscribed persons and their prosecutors, the date and cause of the proscription, likewise the names of those who were absolved from proscription, and the cause and day of their absolution. He was to enter the names and status and origin of the sureties of those who had been

[1] It should, however, be observed that the introduction of Roman law into Germany was not mainly the work of the *Doctores Legum*. They had an importance, for they gave counsel to the emperor, to the princes, and to some important imperial towns. But they were not popularizers. The best jurist of the fifteenth century, Zasius says with a proud pedantry that it does not beseem a doctor "to wallow in the filth of the courts or consistories." The real popularizer is the half-learned town clerk. For all this, cf. Stintzing, *Geschichte der populären Literätur des Römisch-Kanonischen Rechts in Deutschland*, and *Zasii Epistulae*, ed. Riegger. "There was, of course, professional skill among the canonists, and this was valued," *Conc. Trev.*, 1227 ; Harzheim, *Concilia Germaniae*, iii. 538, "Item cum hodie causae non debeant agitari nisi in civitatibus vel locis magnis et solemnibus ubi possit haberi copia jurisperitorum inhibemus ne causae ex jurisdictione descendentes ab aliquo vicario rectore et Decano Christianitatis inter subditos audiantur" ; cf. *ib.*, iii. 570. There were several well-known German canonists in the twelfth century, such as Rupert of Deutz, Anselm of Havelburg, Rudolf of St. Trudo, Gerhoh of Reichersberg ; and earlier still, there are several well-known names, such as Olbert of Gembloux, Burchard of Worms, Aribo of Mainz, Gebhard of Salzburg ; cf. Sugenheim, *Geschichte der Clerus im Mittelalter*.

absolved; he was to receive and to preserve letters containing complaints. He was to write down the names of those who were accused of being injurious to the land, and to delete the names as soon as they had been absolved from suspicion. He was to inscribe all sentences which had been delivered before the emperor in greater causes, especially in cases where there was a conflict of opinion as to a point of law, and he was to enter the name of the land, according to the custom of which the sentence was issued.

We have no evidence that this clause ever came into operation, but the number of sentences of the royal court preserved from the thirteenth century, though pitifully small when compared to the legal records of England during the same period, seems to prove that the habit of recording sentences which affected the interests and privileges of powerful persons had begun to make way. But we suspect that the interests of individuals who wished to obtain written evidence of a legal victory was more important in securing this result than any desire to improve the legal memory of the court.[1] Certainly many of the cases preserved to us simply reiterate old and familiar decisions, and as the sentences were recorded in Latin they can have had little influence on practice.[2] Compare this court, with its fluctuating, unprofessional composition, with its lack of a fixed judicial capital, with the obligation under which it lay to respect local

[1] Thus the *Sententia de bonis mensae non alienandis* of 1153 was drawn up two years after it was given (Weiland, i., No. 146; Franklin, *Reichshofgericht*, ii., p. 275).

[2] The first German sentence which has come down to us dates from 1297 (Stobbe, i., p. 467). Written pleadings come in mainly with the Luxembergers, but pleadings by word of mouth go on to the end of the Middle Ages. Real protocols, in which pleadings are reported, begin under Frederick III. (Franklin, *Reichshofgericht*, vol. ii., pp. 190-200).

customs and social standing, with its absence of an independent artificial memory, to the *Curia Regis* of England in the twelfth and thirteenth centuries, with its fixed judicial and financial staff, its trained officials putting forth such books as the *Dialogue on the Exchequer* and the *Tractatus de Legibus*, its Pipe Rolls and Coram Rege Rolls, its elaborate machinery of writs, its circuits, its high professional tradition. While the *Curia Regis* of England puts upon the judicial market legal commodities of its own, which are better and cheaper and more expeditious than anything which its competitors can offer, drains the feudal courts of all the business which is worth having, develops the criminal and civil juries, moulds the common law of England,—the *Curia Regis* or *Imperatoris* of Germany has, during the same period, exercised no discernible influence which was destined to be fruitful. The rules of feudal law were, to some extent, elaborated by its decisions, for they were largely based upon military and administrative needs,[1] though the practice of the seigneurial courts themselves must have co-operated almost as powerfully to their formation. The royal court must have shaped some special rules as to the trials and penalties of princely offenders.[2] It is not unlikely that the strenuous methods of the later Hohenstauffen had a share in developing the penal

[1] For a decision of the imperial court on feudal military service, cf. Böhmer, *Fontes*, iii. 287, "Interim autem questio coram imperali presencia de beneficiis ipsorum qui milicie stipendia contempserunt persolvere, suborta est. Et exinde principum omnium emanavit sentencia, quod abjudicata eis forent beneficia, donec et stipem persolverent secundum beneficiorum jura, et contemptum quem fecerant per composicionis dispendium dominis suis civiliter expiarent."

[2] Otto Fris., *De Gestis Frid.*, ii., c. 28, "Est enim lex curiae, quod quisquis de ordine principum principis sui iram incurrens compositionem persolvere cogatur centum librarum debitor existat." For the *Palatinae Leges*, cf. Lambert Hersf. *ad* 1075, 1075.

law, tending to substitute true afflictive penalties for the old customary compositions. But the feudal law was sterile, the princely law was privileged. The true development of the penal law was impeded by the absence of material force, by the increasing absorption of the emperors in Italy, by the paralysing mildness of ecclesiastical jurisdictions. By the end of the thirteenth century the royal court has not succeeded in creating any fruitful body of jurisprudence, for it has always respected the custom of the land, and the custom of the land is kept fresh and primitive by local proverbs and the periodical recitation of decisions [*Weisthumer*].[1] It has not trained a single legal writer. When systematic legal writing in Germany begins, it begins with Eike von Repgow, a Saxon Schöffen and knight; it continues with the nameless clerk of Augsburg, who wrote the *Deutschenspiegel*. It has not improved legal procedure. Judgments of the court were demanded for every step which had to be taken; as to what cases should be heard, and in what order, who should be the forespeaker, what delays should be accorded, what should be the method of proof, what pledge should be paid into court. There were no manuals of procedure or imperial regulations concerning it.[2] Trial by battle was regarded by the imperial courts as the only trustworthy mode of proof right up to the end of the thirteenth century.[3] The duel was frequently resorted to at the royal court in the time of Charles IV., and, despite the efforts of the Church, held its own all through the

[1] Grimm, *Weisthumer*; Stobbe, i. 585, ii. 269; Lamprecht, *Deutsches Wirthschaftsleben*, ii. 624; Schröder, pp. 670-72.

[2] Franklin observes that we have no evidence as to procedure in the lay courts comparable to that afforded by the *Summa de ordine et processu Judicii Spiritualis*, published by Rockinger.

[3] Franklin, *Reichshofgericht*, ii., p. 245.

Middle Ages, and was first expelled in the towns. The law books show it to have been still surrounded with a luxury of curious and archaic detail.[1] The appeal proper in which the case between the two litigants is re-heard before a higher authority, has not succeeded in evicting the Urtheilschelten, according to which the litigant impugns the judgment-finder for his false judgment.

It would seem, indeed, from the *Sachsenspiegel* that the Urtheilschelten was the normal process, and that in Saxony at any rate the dissatisfied litigant might, under certain circumstances, challenge his judgment-finder to battle, and that the question might be settled by a fight of seven against seven. There is a story told, in the thirteenth and fourteenth centuries, of Archbishop Anno II. of Cologne [1056-1075],[2] which exhibits the moral atmosphere in which this singular practice throve. A widow once came to the archbishop and complained of the unjust judgment of the Schöffen. The archbishop ordered the Schöffen to come before him, and to clear themselves of the charge. They were unable to do so, and were sentenced to lose their eyes, all save one, who was allowed to preserve a single eye that he might guide his fellows home. The sentence went on to order that an eyeless head of stone must be carved on the gables of the

[1] *Sachsenspiegel*, i. 63; *Deutschenspiegel*, 89. It is significant of the degree to which ancient conditions had survived that, if the relation of the dead men slain in robbery or theft were to offer battle on behalf of the criminal, the challenge could not be refused, or witness brought, provided the challenger was not *Verfest* [an outlaw], *Sachsenspiegel*, i. 64; *Deutschenspiegel*, 89.

[2] The story is first found in the *Chronica Agrippina*, then in the *Magnum Chronicon Belgicum* and the *Kölhofsche Chronik*. Cf. Ennen, *Geschichte der Stadt Köln*, i., pp. 338, 9. The lateness of the legend, though damaging to its authenticity, is valuable evidence as to the persistence of the practice of punishing judges for their sentences.

houses in which the Schöffen lived, as a perpetual memorial of their unjust judgment. The fact that such a process as the Urtheilschelten should have been possible in the thirteenth century,[1] in spite of the large use of appeals in the Carolingian Age, is a signal instance of the inability of the supreme judge to utilize a civilized instrument, and force a general acceptance of it on the country.[2] The transformation of the Urtheilschelten into the appeal was destined to be the work, not of the crown, but of the towns. It arose out of the custom of small towns referring matters to the supreme court of the city, from which they had obtained their municipal law.[3]

If we study the theory of the thirteenth century law books, we rise with the impression that the prerogatives of Frederick II. were as ample as those of Charles the Great. The king is the fountain of justice; he is "the common judge over all men." Every man has his right before the king. Every man may be called upon to answer before the king in all places and in all causes; only, if his allod be in question, he need not answer save in the land where that allod lies. The king is chosen to judge over allod and fief, and over

[1] Franklin is inclined to see traces of the appeal proper in Henry VI.'s *Mandatum de Appellationibus*, 1191-94 [Weiland, i., No. 335], and in Philip's decision of 1207 [Beyer, *U.K.B*, ii., No. 230, p. 268], but both cases may have been affected by ecclesiastical usage, for the first concerns appeals from the Bishop of Spire to the emperor, the second concerns an appeal of an abbot from the Archbishop of Trèves. Further, the language of the first document ["a gravamine et injuria sibi illata appellare poterit"] is not conclusive against the Urtheilschelten.

[2] Gaupp, *Germanistische Abhandlungen*, p. 126, has contended that much of this was already archaic in Eike's time. Stobbe [i., 313] endorses the opinion. But Eike's statements are reproduced substantially in the other law books (*Deutschenspiegel*, 108, 109; *Schwabenspiegel*, 109, 110).

[3] Schröder, 734, 735. For archaic survivals, cf. *Chron. Reg. Col.*, 1135, "Ipse Godefridus cum fratre suo Herimanno ab imperatore proscribitur in terra ipsorum, scilicet Salica, more antiquorum."

every man's life. Since he cannot be in every land, since he cannot be doing justice at every moment, therefore he enfeofs princes with counties and counts with hundreds [*Scultheitdum*]. No man may judge over the life and limb of princes save the king. No man may judge by the king's ban, unless he has received the ban from the king. He who judges by the king's ban, and has not so received it, shall lose his tongue, except in the marks where the king's ban is not given. The king alone can restore an outlaw to peace, and the outlaw shall follow the king's court for six weeks and obtain the king's letter and seal, and show it to the judge who imprisoned him and brought him in the king's Acht, as evidence that he has "worked his peace." In whatever land within the empire the king may come, there he may judge all cases, which have not been begun or terminated before the court of the land. As soon as the king comes into the land, all imprisoned men are at his disposition, and they shall be brought before him and be convicted or released, and if any man refuse to give up his prisoner, when lawfully summoned to do so by the king's messenger, he shall be immediately put under the Acht, and his house, and the people who retain the prisoner unlawfully. When a Schöffen dies within a county the king may free an imperial Dienstmann and make him a Schöffen and give him the king's ban, and as much imperial property as may suit his office, three manses or more.[1]

[1] *Sachsenspiegel*, iii. 26, 52, 55, 54, 33, 60, 65, 78, 81; i. 59; ii. 12. The word *Schöffen* [derived from German *skapan*, Gothic *skapgan*, Modern German *schaffen*, to create] means a judge; *judex*, *auditor*, *juridicus*, *legum doctor*, *legislator*, are Latin equivalents (Grimm, *R.A.*, 775 f.; Schröder, *Deutsche Rechtsgeschichte*, p. 166, n. 18). The Latin equivalent for *Schultheiss* is *praefectus*.

It must be remembered that these statements are found in the work of a man who was steeped in the practice of the Saxon courts, who cannot be shown to have used even the capitularies or any other written documents, or to have had any knowledge of Roman law.[1] The law stated in the *Sachsenspiegel* is not only a natural German product, but it is the product of the Saxon race, which had been famous for so much spirited resistance to German kings, and for an attachment to its primitive customs, great enough to obscure their occasional barbarity.[2]

But the German kings were also Roman emperors, and as Roman emperors they were necessarily brought into contact with Roman law.[3] Even the brief Italian visits of the Saxons and the Salians reveal to the German mind fragments of that great system. They invoke Justinian, and issue edicts enforcing points of Roman law.[4] They regard themselves and the Pope regards them as the successors of Augustus, Constantine, and Theodosius. The idea that the whole world should be governed by Roman law, and that Roman law was specifically the law of the Roman empire, was not the monopoly of a few extravagant dreamers like Otto III. It recurs in the writings of men of the most various ability and station and age—in Petrus Crassus, the jurist of Ravenna, who in 1086 exhorts the rebellious Saxons to listen to the eighth book of the code; in Otto of Freising, the historian, who speaks of the whole world being informed by the laws of one city; in Huguccio, the Pisan jurist, who, in his *Commentatio ad Decretum*, argues that the French and

[1] Stobbe, i., pp. 304, 5.
[2] *Sachsenspiegel*, i. 18. 2; Michael, *Geschichte des deutschen Volkes*, i., p. 298.
[3] Stobbe, i., pp. 614-22. [4] Weiland, i., No. 50.

the English should be bound to live according to Roman law because they are or should be subject to the Roman empire; in Engelbert, the Abbot of Admont, who holds that as there is but one true divine law in the whole world, so there is only one true human law, the canons and the laws which are consonant to the divine law.

When, in the twelfth and thirteenth centuries, the visits of the German emperors to Italy multiplied in number and increased in duration, and Italy itself became the theatre of renewed legal activity, this idea, implicit though it had always been in the theory of the empire, worked with increasing power. "Know," said the Archbishop of Milan to Frederick I. in 1158, "that all the right of the people in the making of laws has been granted to you. Your will is law, as it is said, 'Quod Principi placuit legis habet vigorem.'"[1] Frederick I. acted on the theory. Like Constantine and Theodosius and Justinian and Charles the Great, he summons ecclesiastical councils, disposing even of the papacy. Laws issued by him and by his successors are sent to Bologna to be inserted in the *Corpus Juris*. In 1165 he decided a case at Worms against the German custom on the ground of the decrees of his predecessors, Constantine and Valentinian, whose "sacred laws" he venerates as "divine oracles." Against the whole lay opinion of the city he declares that a clerk may dispose of his movable property by testa-

[1] According to the *Kaiserkronik*, Lewis I. ordered the study of Roman law, l. 15,100.

"Alse Ludewich daz rîche besaz
Den vursten hiez er sagen daz
Daz sie die Juncherren
Die pfaht hiezen lêren
Nach Rômischen rehte."

ment.[1] Yet when we come to weigh the actual influence exerted upon the practical administration and development of law by the theory of the prerogative, whether stated in its German or in its Roman shape, how slight is the measure of it! In theory the king confirms the ban, but he may not refuse it,[2] for it is practically hereditary, which means to say that in theory justice is derived from the king, but that in practice it is not. In theory imperial fiefs are official and indivisible; in practice they are private, hereditary, and partible. In theory the Roman law is the law of the empire; in practice the empire is covered by a luxuriant jungle of customs. In theory the emperor is supreme judge. In practice the judgments are given by the princes who are hereditary, or by the Schöffen, who are often hereditary, according to an unwritten custom of which they are the depositories. In theory high justice is conferred by the king's ban, and may not be enfeoffed beyond the third person.[3] In practice the ban is not required in the marks, is essentially dispensed with in the principalities, and the limits to jurisdictional subinfeudation break down. In East Saxony, in Thuringia, in Holstein, where there is a strong knightly class with exclusive traditions, filling and monopolizing and transmitting to their descendants the office of Schöffen, the jurisdictional stream is for a time arrested comparatively

[1] Weiland, i., No. 227. Frederick, however, had no intention of introducing Roman law into Germany; cf. his decision of 1181, "Hanc reclamationem jure Francorum prorsus irritam judicavimus"; cf. Schäffner, *Das Römische Recht in Deutschland*, p. 56.

[2] *Sachsenspiegel*, iii. 64, 5.

[3] *Constitutio contra Incendiarios*, sect. 21, "Item si quis comes postjudices statuat, imperatori xxx. libras solvat, postjudex x. libras"; Weiland, i., No. 318; *F.D.G.*, xvi., p. 529.

near its fountain. But by the second half of the thirteenth century even this dyke breaks down. The documents show us that the jurisdictional system of Germany is undergoing a double transformation. In the first place the influence of social distinctions stamps itself upon the courts; in the second place the courts lose the last vestige of their connection with the crown. Whereas the line of cleavage between high and low justice had originally consisted in competence, the higher courts receiving from the crown power to try certain cases, which the lower courts were not empowered to try, in the thirteenth century the line of cleavage ceases to be jurisdictional and becomes social. The great men will not demean themselves to attend a village tribunal, and the Emperor sanctifies their reluctance. "*Ad centas nemo synodalis vocetur.*" No suitor to the County Court need attend the Hundred. So the County Court [*Landgericht*] becomes an aristocratic tribunal for the nobles and knights, the upper clergy and the towns, while the Hundred Court [*gogericht, centa*] becomes a court for the peasantry. It was a natural consequence that both should be omnicompetent for the classes with which they respectively dealt, for who would grudge the *Gograf* his blood ban, if the blood in question was the base blood of the peasantry? So high justice came to be exercised in many places by mean men over mean people, and no permission was asked of the king. Instead of a fountain of justice proceeding from the monarch, we have innumerable small and detached pools.[1]

It was, as we have seen, not in accordance with

[1] Schröder, pp. 585-7; *Statutum in favorem principum*, c. 9 [Weiland, ii., No. 171]. The anxiety of the German noble to be excused attendance on the Hundred Court can be paralleled in England. Stubbs, *Select Charters*, p. 384. 17, p. 402. 4.

primitive Teutonic principles that the king should directly legislate.[1] Even the mighty Carolings respect this sentiment, and the main importance of the capitularies lies not so much in any positive additions which they may have made to German private law, as in the fact that they create and to a certain extent maintain the machinery for securing peace and order. Indeed, if we wished to draw a chart of legislative progress among the Teutonic peoples, we might be tempted to draw it after the following fashion. While the laws are made and preserved and changed by the people, the administration belongs to the king, who becomes the guardian of the public peace. Issuing certain rules for the protection of certain persons or times or places or things, he affixes certain peculiar penalties for the violation of these rules. The rules grow into a penal code. The penal code comes to contain provisions regulating judicial procedure, modelling judicial organization. The guardian of the public peace becomes the supreme legislator, and from the vantage ground of penal law annexes one province after another.

Such a chart would approximate to the truth, but it would need some qualification before it exactly suited the condition of things in Germany. Although it is roughly true that German medieval legislation springs from ordinances issued to secure the maintenance of public

[1] It is significant that in spite of the strong tendency to refer rules of law to emperors [Stobbe, i., 336, n. 4], Eike von Repgow does not refer any single article to an emperor. John von Buch, who wrote in 1325, ascribed the last five articles of the *Sachsenspiegel* to Frederick of Stauffen. The later glossators follow him, and ascribe iii., 82, sect 2 to 84, to Otto I.; iii., sect. 85 and 86, to Otto the Red. But these ascriptions possess no authority whatever. Cf. Steffenhagen, *Die Entwickelung der Landrechtsglosse der Sachsenspiegel* [*Sitzungbericht der Wiener Akademie*, vol. 101, p. 753]; Homeyer, *Richtsteig Landrechts*, pp. 82 and 30; and *Sachsenspiegel*, n. 6 to iii. 82; Spangenberg, *Beyträge zu den Teutscher Rechts der Mittelalter*, p. 40.

peace, yet we must remember in the first place that royal enactment is not the sole source of these ordinances, and, in the second place, that these ordinances are not the sole source of the legislative power of the emperor.[1]

The Saxon dynasty ruled Germany for a hundred and eight years, but it has left no general ordinance for the preservation of the public peace. We have indeed the evidence of the chroniclers that the emperors, in their journeys through the Reich, quieted feuds and established concord.[2] We know that in 1004 Henry II. held a colloquy at Zurich, and caused all men, from the smallest to the greatest, to swear to keep the peace and to put down larceny, and that this peace spread over the whole of Swabia.[3] There is evidence that in 1011 the emperor came to Merseburg, and, with the counsel of a few men, confirmed a mutual peace there for five years.[4] In 1019 Henry II. issued a capitulary at Strassburg, one clause of which provided that if any one should kill another within truce time or after the kiss of peace should be given, he should not be allowed to defend himself by a champion, and that, if convicted, he should lose the hand with which he had committed the homicide.[5] We have two penal decrees issued by Henry, in 1023 and 1024 respectively, for the purpose of quieting the inveterate feud between the servants of the Bishop of Worms and

[1] In Italy the emperor felt the force of the classical tradition.

[2] *Cont. Reg.*, 920-936, SS. i., 615-617 ; *M.B.*, xxviii., 1. 214.

[3] *Adalboldi Vita Heinrici*, ii., c. 42 [SS. iv., p. 694]. Cf. Thangmarius, *Vita S. Bernwardi* c. 43 [SS. iv., 777], "Quocunque vero sapientissimus Imperator (Henry II.) ora sui sanctissimi vultus circumtulit si quos forte dissidentes reperit aut statim reconciliabat, vel si quicquam obstitit ut id non posset efficere nunquam mente feriabat, donec violatam charitatem reformabat."

[4] Thietmar, vi. 39.

[5] Weiland, i., No. 32.

those of the Abbot of Lorsch, and the "innumerable and frequent contentions" between the Houses of Fulda and of Hersfeld.[1] But there is no capitulary in the grand style. The penal legislation of the emperor is, as it were, dealt out in small doses to be consumed locally by definite classes of men. The public peace is not universal and imperial. It is made locally and in minute fragments, by the kiss of peace exchanged between warring families, by truces sworn for definite periods by the great men of a province, by an oath of peace exacted by the emperor in a provincial assembly.[2] The emperor indeed will make peace when and where he can, but he cannot be everywhere. Men will make peace associations without him of varying degrees of durability and strength.

The first two emperors of the Salian House were certainly no weaker than their Saxon predecessors, but they have left not a single scrap of peace legislation. It cannot of course be affirmed that no legislation existed because none has been preserved. When we are told that Conrad II. journeyed through the Reich after his coronation, and "most firmly girt the kingdoms in the bond of peace and the royal protection," it would be possible to infer that the emperor either created or confirmed provincial peace unions, safeguarded by special penal provisions.[3] When we learn that he confirmed "the most cruel law of the Saxons," we might infer that this law was a Saxon Landpeace, for the violation of which cruel penalties

[1] Weiland, i., Nos. 35, 36.

[2] *Chron. Reg. Col.*, *ad* 1111, "Seditio inter ducem Liutgerum et marchionem Rudolphum oritur: set ante natale Domini coram imperatore Goslariae pacificantur." *Ib.*, 1142, "Deinde ipsos principes inter se dissidentes, ut decuit regem, pacificare curavit."

[3] Wipo, *Vita Chuonr.*, cc. 6, 23, SS. xi., p. 263.

had been affixed.[1] But there would be no certainty in such inductions from the vague talk of a Burgundian chaplain. Nor does the language which is used by the chroniclers of Henry III. support the inference that he was the author of any specific penal legislation for Germany. Indeed, so far as they may be taken in evidence, the chroniclers of the reign give us the impression of a policy of bountiful exhortation, and of wholesale remission of penalties, rather than of positive legislation or of insistence upon established rules. The Annalist of St. Gall describes how, at a synod of Constance in 1043, the emperor mounted the tribune with a bishop, declared a general amnesty and exhorted the people to peace.[2] The Annalist of Reichenau explains how, by his personal prayers and exhortations, the emperor induced all the Swabians to remit their debts and to forgive their enemies, and confirmed by his edict a peace such as had not been heard of for many centuries.[3] We learn how, at Christmas in the next year at Trèves, the emperor absolved all who had been guilty of high treason, and promulgated a law through the whole kingdom that all should condone their offences.[4] These are not the measures of a strong legislator. On the contrary, they are the confession of legislative and administrative impotence. They are an appeal to piety rather than to law.

Yet there is evidence for supposing that Henry was not unmindful of what was due to the imperial majesty.

[1] Wipo, *Vita Chuonr.*, c. 6.

[2] *Ann. S. Galli Majores*, SS. i., p. 85.

[3] *Chron. Herm. Aug.*, SS. v., p. 124, "Deinde precibus et adortationibus omnes praesentes Suevigenas, postea in aliis regni sui provinciis idem actum iri satagens, dimissis debitis et inimicitiis, sibi invicem reconciliavit, pacemque multis seculis inauditam efficiens, per edictum confirmavit."

[4] *Lamb. Ann.*, SS. v., 153.

A fragment of a constitution has survived to us affixing the penalty of death to those who contemn the imperial presence. But the constitution was probably issued at an assembly of Italian magnates held at Zurich in 1052, the sources from which we derive the best text are Italian, and it is doubtful whether it was actually applied to Germany.[1]

It might have been expected that Henry's Italian experience would have reacted upon his German policy, for in Italy he found written law and an exalted view of the imperial prerogative. The Italian people expected constitutions based upon the Code and the Canons, and Henry, meeting their wishes, promulgated laws in the old imperial style. A Burgundian chaplain exhorted the monarch to issue an edict through Germany, making it compulsory for the rich to instruct their children in written law after the Italian manner. But there is no evidence to show that he ever acted upon this advice, or that the Roman emperor in Henry ever expelled the German king. That he succeeded, on the whole, in keeping the peace of Germany we know, for his death was followed by a marked outburst of anarchy. But we have not a particle of testimony that he ever made a Landpeace or issued a written ordinance for his Teuton subjects.[2]

Henry was zealous and energetic, but he was not able alone to maintain the fabric of the public peace. In the outlying parts of the empire society had to protect itself. In Flanders there is a voluntary peace-

[1] Weiland, i., No. 54.

[2] Henry's Italian laws are printed in Weiland, *Constitutiones et Acta Publica Imperatorum et Regum*, i., Nos. 50, 52, 53, 54. For Wipo's advice, cf. *Tetralogus*, l. 185-202, SS. xi., pp. 251, 185 ff., 197; and for the possible effects of it, *Ann. Aug.*, 1041, SS. iii., p. 125.

union in 1030.[1] In the province of Arles the Church accepts the Truce of God. It protects four days of the week by a special peace; it proclaims that homicide, committed within those days, is to be punished by a long exile to Jerusalem; it exhorts its members to expel robbers.[2] The Alsatian union is not merely a truce of God, protecting certain days of the week and holy seasons of the year; it also attempts to discharge obligations which belonged to the primitive conception of the office of the German king. Then the truce spreads to Lombardy, to be enforced by methods which are specially Italian. The act of episcopal autonomy in the Burgundian and Lombard kingdoms is quickly copied in Germany. Accepted at Liège in 1082, at Cologne in 1083, at Bamberg in 1085, adopted by the emperor in a synod at Mainz in 1085, this bishop-made truce is in fact an elaborate penal code for the protection of special days and seasons.[3] If a freeman violates the peace at Liège, he loses his inheritance, is deprived of his benefice, is expelled from the bishopric. A serf or clerk loses all that he has and his right hand. At Cologne the freeman who offends is expelled from his property and loses his estates and benefices. The offending slave is beheaded, condemned to lose his hand or his hair, according to the measure of his offending. Where the layman is beheaded the clerk is degraded, and where the layman is mutilated the clerk is hanged. The freeman who wishes to purge himself of the accusation must bring twelve men equally free and noble with himself to swear to his innocence; the serf must purge himself by the judg-

[1] SS. vi., p. 399. [2] Weiland, i., No. 419.

[3] For the Peace of Cologne and Bamberg, Weiland, i., Nos. 424, 425; for the Peace of Liège, SS. xxv. 90, and Weiland, i., No. 424.

ment of cold water. The execution of these provisions is entrusted, not only to the established authorities, to counts and judges and nobles, but it is expected that the whole community of the land will help in bringing the violators of the peace to justice. The movement springs entirely from the Church; the bishops are the pioneers, and the emperor follows meekly in their wake.

The Truce of God was made part of the general law of the Church by the first three Lateran Councils [1121, 1139, 1179], and it was received into the *Corpus Juris Canonici*. It differed from what was subsequently known as the Landpeace in being ecclesiastical in origin, issued originally for a single diocese or province at a diocesan or provincial synod, and designed to protect, by ecclesiastical sanctions, certain days of the week and seasons of the year. But the Truce of God, though distinct from the Landpeace, had an important influence on its development. It was a signal instance of successful local autonomy, and it spread in Germany during the troubled reign of Henry IV., when the imperial power was at its weakest, and men were driven to find peace in whatever way they might. Provincial unions against robbers had not been uncommon; there had been such a union in East Franconia in 1058.[1] But they had been short-lived and fragile. The Truce of God was a more stable institution, for becoming part of the common law of the diocese or province in which it was established, and being frequently confirmed by the emperors, it served as a model for future Landpeaces, and entered into them as an ingredient. In one of the darkest hours

[1] Ussermann, *Episc. Wirzburg Cod. Prob.*, 21; and *Lamberti Annales*, SS. v. 178.

of the war of the Investitures [1093], the dukes of Swabia and Bavaria met the Swabian nobility at Ulm, and swore a Landpeace for two years. In the following year the peace was accepted in Bavaria, and spread to the borders of Hungary. The Franconians and the men of Alsace swore to observe it in their territory. It provoked an echo in Istria. Its main provisions were accepted in a treaty which the emperor made with his adversaries in 1097, and it became the basis of the first imperial Landpeace in 1103.[1]

This Bavarian peace was a summary document, if we have it in its entirety. Peace is sworn to churches, monks, clerks, and merchants, except to those who sell horses out of the kingdom; penalties are affixed to theft and rape; complaints concerning estates and benefices are to go before the rectors of the league; a limit is fixed to the purveyance which may be demanded, when members of the league are in pursuit of a criminal, and this is all. But the Bavarian Peace becomes more elaborate in Alsace. It secures protection for special places and people, for churches and their surroundings, for clerks and women and merchants and hunters and pilgrims, and countrymen while they are working on the field or going to and from the plough. It determines penalties for theft, and defines the provisions which may legally be taken by soldiers riding upon imperial service or upon the service of the league. It affixes secular penalties to the violation of the sacred days and seasons. A freeman who assaults one of the league within the days forfeits his life, an unfree man his hand. It regulates procedure. A freeman or ministerial clears himself of an accusation, after a respite of seven days, with seven men of his own class;

[1] Weiland, i., Nos. 426-429.

a common man and a peasant by the ordeal of cold water. The treaty is to be valid for ever; the young men shall be forced to swear adhesion to it, and every Sunday it shall be taught from the pulpit. On Wednesday evenings the advent of the Peace of God shall be proclaimed by the church bells. The task, which properly belonged to the emperor, has in Alsace fallen to others to perform. In the Landpeace of Alsace we find for the first time united the principles of the Truce of God, which had been the creation of the French Church and those ancient Germanic ideas which are embodied in the conception of the royal protection or *mundium*; we find a new penal code elaborated by a provincial assembly; an autonomous organization, civil and ecclesiastic, created for the preservation of the peace.[1]

The Church and the nobles together created the Landpeace, and the emperor adopted it. The first imperial Landpeace belongs to 1103. This imperial Landpeace is not an act of legislation. Like its provincial prototypes, it too is a treaty, sworn by the emperor, the emperor's son, and the magnates of the kingdom, lay and ecclesiastical. It was only to last four years. It was only binding on the king's friends. Its execution depended upon the *conjuratores*, upon those who had sworn it. It was but a partial suspension of arms. Peace is indeed sworn to churches, clerks, monks, laymen, merchants, women, and Jews; stern penalties are inflicted for crimes of violence and theft; but a phrase lights up the chinks in the fabric, "If your enemy meet you in the way, harm him if you can. If he flee into a house or court let him remain uninjured." After

[1] Weiland, i., No. 429, and Goecke, *Die Anfänge der Landfriedenseinrichtungen in Deutschland*, pp. 34-36.

all, this first imperial Landpeace falls a long way short of a Carolingian capitulary; it falls short even of the Landpeace of Alsace.

These Landpeaces then, which originate in the long dragging war of the Investitures, are not originally due to imperial legislation. They are not universal but local; they are not perpetual but temporary; they do not bind any except those who swear to observe them.[1] They are the last remedy applied by a disorganized society to staunch its wounds. A legislator was required to bind up these separate temporary local treaties into a durable ordinance for the protection of the imperial peace.

In the middle of the twelfth century the legislator came. He was Frederick Barbarossa, the first of the emperors since Charles the Great who was possessed of real organizing power. Frederick does not discard the system of local pacification. On the contrary, he felt it his duty to confirm any pre-existing local arrangement for the maintenance of peace. In the very first year of his reign he issues a provincial Landpeace for Swabia, and in 1179 he renews an ancient Landpeace for Rhenish Francia, which was attributed by the natives to Charles the Great. But he transcends these local arrangements. He makes imperial Landpeaces, which are ordinances not treaties, and which are intended to have universal and perpetual application. In the first year of his reign, 1152, there is a general Landpeace ordinance for Germany in twenty articles, which is, in fact, a new and important penal code.

[1] Landpeace of 1135 [*Chron. Reg. Col.*]: "In festo pentecosten apud Magatheburg primum principes regni coram imperatore firmissimum pacem domi forisque ad decem annos juraverunt et deinde cetera multitudo plebis tam ibi quam per singulares regni partes hec eadem facere suadetur et compellitur."

Six years later, in 1158, he issues a Peace Constitution at Roncaglia, which is to apply to all the subjects of the empire, and to be sworn to every five years. Then, in 1186, a constitution is issued against incendiaries at a Council of Nuremberg,[1] which is ordered to be inserted among the laws of the Roman emperors, in order that it may be perpetually enforced.[2]

No legislator is required to be original, and it would be hard to find a successful law which is not an adaptation of earlier material. The Constitution against Incendiaries was based upon decrees issued by Innocent II. and Eugenius III., and already adopted independently by a bishop of Liège in his own diocese. The German Landpeace of 1152 probably contains few provisions which had not appeared in some one of the earlier treaties. But there was a real difference between a constitution issued in virtue of imperial authority and a mere treaty. There was a real advantage in the unification of the penal law. There appears to have been real progress in the efficiency with which the penal law was enforced.[3]

[1] Instead of forbidding all self-help and feud, as in the Roncaglian Landpeace of 1158, the Constitution against Incendiaries ordered that at least three days' notice must be given before the beginning of a feud.

[2] One of the Roncaglian laws of 1158 was inserted in the *Codex* of Justinian. The *Constitutio*, however, does not appear to have actually been so inserted [cf. Stobbe, *Gesch. der deutsch. Rechtsquellen*, i. 464; Schröder, pp. 634, 744; Giesebrecht, *K.Z.*, vi., p. 658]. Brock [*Die Entstehung des Fehderechts im deutschen Reiche des Mittelalters*] contended that the *Constitutio* gave legal recognition to the right of feud for the first time.

[3] *Chron. Reg. Col.*, 1155, "Imperator...perturbatores regni et pacis adeo edomuit ut in brevi quies firmissima terrore sui adventus redderetur"; *Ann. Ottenbur.*, 1154, SS. xvii. p. 313, "Multa loca et ecclesiae igne consumpta sunt. Multus sanguis effusus est pro pace firmanda a Friderico rege, plurimi suspensi, multae ecclesiae et villae et castella igne succensa." Cf. *Chron. Reg. Col.*, 1188, "Imperator totam aestatem circa Wisarem exegit, castella et munitiones de quibus rapinae et thelonea injusta fiebant,

Frederick I.'s legislation did not extinguish the local Landpeaces. They survived him, and were confirmed by his successors. But all the earlier Landpeaces were eventually swallowed up in Frederick II.'s Peace of Mainz, which was promulgated both in Latin and German in 1235. This great constitutional document formed the basis of all subsequent imperial Landpeaces, and is the most important legislative monument bequeathed by the Hohenstauffen emperors to Germany.[1] The emperor begins by stating that since the Germans live according to private custom and unwritten law, many questions are decided by opinion rather than by established law. He has, therefore, with the counsel and consent of his princes, lay and ecclesiastical, promulgated certain constitutions, which are to be received in the public monuments, and to be inviolably observed upon pain of high treason. The strong imperial flavour of this opening can be detected in other portions of the document. The receivers of thieves and of stolen goods are to suffer like penalty with the principal offender, according to a maxim of the Roman law. A professional justice, appointed by the emperor, is to try all cases except those of the greatest importance, and the decisions of his court are

destruxit"; *ib.*, 1197, "Rumor falsus subito de obitu imperatoris emergens homines pravos et pestilentes ad predam et direptionem ... instigavit ... donec, cognito quod adhuc viveret imperator, a seviendi licentia repressi sunt."

[1] The text is printed by Weiland, ii., No. 196. It enjoyed so much authority that in 1400 it was glossed by Nicolas Wurm, who, however, mistook it for a law of Albert I. Schröder, p. 631, and Böhlau, *Nove Constitutiones domini Alberti d. I. der Landfriede von* 1235, *mit der Glosse des Nic. Wurm*, 1058. Cf. *Chron. Reg. Col., cont.* iv., *a.* 1235: "Curia celeberrima in assumptione beate Marie apud Maguntiam indicitur; ubi fere omnibus principibus regni Teutonici convenientibus pax juratur, vetera jura stabiliuntur, nova statuuntur et Teutonico sermone in membrana scripta omnibus publicantur."

to be preserved in writing by a notary. A defendant who has been challenged to battle for *laesa majestas*, and does not appear, a man who can be proved to have been a year and a day under the imperial proscription, is to be declared *ehrenlos* and *rechtlos*, honourless and rightless. Those who knowingly harbour or defend proscribed persons are to be condemned to the same penalty as the proscribed.

There is another noticeable feature about the Mainz Landpeace — its comprehensiveness. It safeguards ecclesiastical jurisdiction and property. It exhorts the advocates of churches to abstain from extortion, under threats of imperial vengeance. It assigns proscription as the penalty for the breach of a truce, and this proscription cannot be terminated except at the will of the plaintiff or with the loss of a hand. It exhorts all judges, great and small, to judge according to the reasonable custom of the land. It condemns self-help, unless actually necessary for the immediate defence of person or property. It commands the plaintiff, who cannot get justice, to keep the peace for three whole days before he defy his adversary upon penalty of outlawry. It removes all new tolls erected since the death of Henry VI. It commands receivers of tolls, by land and water, to repair bridges and roads, and to give a safe-conduct to travellers through their district, upon pain of forfeiting, on the third conviction, their toll to the lord from whom they hold it. Lords or cities who levy tolls and taxes upon pretext of building fortifications are to be punished as public robbers. A feud or war breaking out between lords who have toll or conduct is not to result in injury to travellers. Travellers are not to be forced to go upon other than the public roads in order that

they may be mulcted. All mints erected since the death of Henry VI. are to cease, unless held lawfully of the empire. Fraudulent money is prohibited. He who usurps another's mint-stamp is to be treated as a forger. No one is to sell safe-conduct unless he holds the right by feudal law of the empire. The towns are forbidden to have *phalburgers* or non-resident citizens. No one is to take a mortgage without the authority of the judge of the province, upon pain of being punished as a robber. Special clauses deal with offences of children against parents and of the penalties to be inflicted, of the procedure to be followed in these cases. Other clauses deal with proscription, others again with judicial organization.

Formally considered, the Peace of Mainz may be taken to illustrate the theory of the empire as it was held by Frederick the Great. We see the supreme legislator acting, indeed, with the counsel of his princes, but innovating upon German tradition with a contemptuous detachment and a bold Romanism which are all his own. But how far does this fine appearance correspond with reality? How far had the emperors really been able to subvert the old German conception that law emanates from the will of the people? How far had they been able to build up an imperial peace, to unify criminal law, to extirpate feuds? The Peace of Mainz itself supplies part of the answer, for it confirms all the concessions which Frederick had made to the princes at the expense of the towns and the lower nobility. And if we turn from the Peace of Mainz to the provincial peaces which succeeded it, we find that Germany can still be only pacified in patches. For these provincial peaces are still sworn for limited periods, and are only held to be binding upon those

who have sworn them. Even the imperial peaces have to be sworn provincially. Even a Landpeace of immemorial antiquity, such as the old Saxon Landpeace attributed to Charles the Great, must be sworn to periodically for limited periods, as if it were only by a convulsive effort that Saxony could prevail upon itself to observe the decencies of life. We find that the limits of a Landpeace are determined by lines of demarcation, drawn with the jealous particularity of men isolating a disease. If we ask ourselves what the effect of the Landpeaces has been upon the development of penal law in Germany, we must undoubtedly answer that it has been great, that it has played a large part in breaking down the old tariffs of compensation, and in substituting true afflictive penalties. But if we wish to determine how large a part of this process has been due to imperial initiative, we are met by the fact that most of the penal provisions in the Saxon Landrecht are derived from an old Saxon Landpeace, for which no authentic imperial origin can be assigned, and that the most comprehensive penal code reduced to writing within the limits of the imperial period was drawn up by Otto, Count Palatine of the Rhine and Duke of Bavaria, and sworn to by the Bavarian bishops and nobles in 1244.[1]

Yet if we are to estimate the real influence of the emperors over the development of penal law, we must consider, not only the Landpeaces, but also the practice of the imperial court. Now our evidence here is very scanty in bulk, and very defective in quality, but it yields one or two very clear results. In the first place, there is scarcely a king during this whole period who has not to put down one or more serious revolts

[1] Weiland, ii., No. 427.

in Germany.[1] In some cases the offenders are never brought to justice, but in a large number of instances a sentence of the royal court is issued against them. The sentence is delivered in the ordinary way. The emperor asks one of the princes for a judgment, and the judgment is then ratified by the court. Now the surprising feature of these sentences is their extraordinary mildness.[2] It is true that summary afflictive penalties are often imposed,[3] but the court seems to regard insurrection as a normal, regrettable, but in no way heinous, offence. The most persistent and repeated rebels are frequently pardoned and restored to their offices. The penalty of death is curiously infrequent. Outlawry or the Reichsacht, which must originally have meant that the outlaw might be slain with impunity, comes to mean something very much less terrible. It comes to mean that any one has free permission to arrest the outlaw or to distrain upon his person or goods. The right of insurrection is, in fact, formally acknowledged in the *Schwabenspiegel* [about 1278], "A man may withstand the unright of his king and of his judge."[4] So far was the imperial

[1] Waitz, *D. V.G.*, vi. 395 ff.

[2] A list of sentences may be found in Franklin's *Reichshofsgericht.* Owing to the looseness of the language of the chroniclers, it is impossible to specify with exactitude the precise legal charges upon which proceedings were taken. The general result, however, is clear.

[3] *Chron. Reg. Col.*, 1110, "Rex festum paschae apud Trajectum peragit. Ibi ex jussu regis capito quidam truncatur, quia in necem ejusdem loci episcopi Cunradi consensit." *Ib., ad* 1127, "Quidam ... qui dominum suum episcopum et ecclesias Dei sub eo positas superioribus annis saepius infestabat, comprehensus jussu regis capitalem sententiam accepit." *Ib., ad* 1156, "Quidam miles Bernhardus nomine, qui in necem Herimanni de Winceburg conspirasse a duce Saxonum convictus est, in jussu ipsius imperatoris decollatur."

[4] *Ssp. Landrecht*, ed. Homeyer, iii., 78. 2, "Die man mut wol ok sime koninge und sime richtere unrechtes wederstan"; cf. Waitz, *D. V. G.*, vi. 395. It is curious to note how the constitutional theories of the thirteenth

court at the end of the thirteenth century from having worked out a law of treason.

The explanation is not far to seek. The imperial court suffered from a double weakness. Internally it was weak, because it was composed of an aristocracy, with a vested interest in private warfare.[1] Externally it was weak because it had no standing executive to enforce its decisions. Let us suppose that a noble has been outlawed by a verdict of the court. If the emperor is interested in the matter, he will collect some troops, ride off to the noble's land, besiege his castle, ravage his crops, burn his villages. Sometimes, when the offender is powerful, like Henry the Lion [1180], or Otto of Wittelsbach [1209], or Frederick of Austria [1236], the princes have to be summoned, and a campaign *en règle* has to be undertaken to bring him to his knees. In fact, the execution of a sentence seems in most cases to resolve itself into a tiny war. The court, therefore, must beware lest it drive men to desperation, for in an age in which the sword, the bow and the lance are pitted against the stout walls of a feudal castle, the sieging party meets with many a rebuff. The criminal may always prove capable of resisting the emperor and his men, and in these circumstances judicial valour must be tempered by a high

century writers are influenced by conceptions of private law. The right of insurrection is here affiliated to the right of Urtheilschelten. Professor Maitland observes that the right of making war against the king is probably the last element to be added to the English law of treason [*H.E.L.*, ii., p. 503].

[1] Occasionally the animosities of the nobles break out in the court itself. The scene at the court of Henry VII., in 1225, on the occasion of the judgment found against the murderers of Engelbert of Cologne is highly instructive. "Super qua reclamatione G. indignatus est, et cum F. graviter cepit contendere, et G. converso gravius indignari et factus est tantus strepitus, quod XL. et VIII. viri suffocati ibidem succubuerunt" (*Ann. Reinh. ad* 1225).

measure of discretion. At any moment you may be forced to treat with the man who has been proscribed with all the formalities.

Still, the emperors accomplished much stern and wholesome justice. "The prince," says Otto of Freisingen of Frederick I., "travelled actively in all directions, destroyed the castles, fortresses, and receptacles of several robbers, and when he captured some of them, he either beheaded them or hanged them."[1] It seems to be clear, from the accounts of the extraordinary anarchy which prevailed in Germany after the death of Henry III., during the earlier absences of Frederick I., and on the first tidings of the death of Henry VI., that the fear of the imperial hand did exercise a real and salutary restraint upon evil-doing.[2]

Yet the summary jurisdiction of the emperors seems to have little effect upon the development of penal law. There is no list of *placita regalia*, of pleas reserved for the royal hearing, such as was drawn up in the days of Cnut in England. The conception of offences, as crimes against the state, is still, in the thirteenth century, rude and undeveloped, as is proved by the fact that a stipulation is apt to be inserted into the landpeaces that no man can be released from the Acht

[1] Otto Fris., ii. 28, 1156.

[2] For the anarchy in Frederick's time, cf. Otto Fris., ii. 28, "Totum paene transalpinum imperium seditionibus motum, ferro, flamma, publicisque congressionibus turbatum absentiam sui sensit praesulis," and the following remarkable language [Weiland, i., No. 198], "Praeterea tota nostra provincia sic subitanea calamitate bellorum et incendiorum opprimitur ut nisi divina gratia et vestra imperiali sublevetur auctoritate in desolationem tota redigatur." For the anarchy after Henry's death, cf. the striking letter of Philip to the Pope [Weiland, ii., No. 10], "Turbatum fuit imperium ... ut a prudentibus non inmerito desperari posset ipsum Romanum imperium diebus nostris in pristinum statum nunquam posse reformari, cum quilibet jam sine judice viveret."

until he has satisfied his accuser.[1] This means that even when the state has been invoked to assist the individual, the individual is still the principal, and that so little confidence is reposed by the individual in the state that the state is debarred from freely exercising the prerogative of mercy. The rude blade of private revenge lies sheathed in the most solemn executive act of the supreme court of the empire. Again, many bad offences may be atoned for by compensation. In an age which tolerated private war, homicide is a venial offence. If a *ministerialis* of the Archbishop of Cologne has been convicted on the evidence of seven of the bishop's domestics of homicide, then he must ride for a year and a day after the archbishop with three horses and two serfs, and his friends must, during this period, plead with the archbishop that he may be received again into favour. And if at the end of the time he has not been received into favour, then he is imprisoned in the archbishop's prison for the rest of his life at his own expense. By day the doors of the prison are open so that he may receive his friends and relations, but any child begotten by him while in prison is illegitimate. He is allowed to go out of prison nine days in the year in order to attend the great festivals of the Church, but that is the limit of the court's indulgence. It cannot be said that the Dienstrecht of Cologne is Draconian.[2] Yet, partly owing to the exceptional provisions of the Landpeaces, partly owing to

[1] *Landfriede*, 1179; *Constitutio Contra Incendiarios*, 1187; *Treuga Henrici*, 17; *Const. Mainz*, c. 2; and cf. Franklin, *Reichshofgericht*, vol. ii., p. 344. There is no documentary confirmation of the doctrine laid down in *Ssp.*, iii. 34. 1, 2; *Dsp.*, 259, 60; *Swsp.*, 285; cf. Franklin, ii. 347.

[2] *Jura Ministerialium Beati Petri* [1160-76]; Ennen and Ekertz, *Urkunde zur Geschichte der Stadt Köln*, vol. i. p. 221 ff.

the vigorous justice of the emperors, a sterner treatment of bad crime finds its way into the thirteenth century law-books. "All murderers, and those who rob the plough or mills, or churches and churchyards, and betrayers and burners to death [*mortburnere*], or those who employ their judicial messenger for their own profit, all these shall be broken on the wheel. He who slays a man or captures him or robs him or burns him without burning him to death, or violates a wife or a maid, or breaks the peace, or is taken in adultery, shall be decapitated. He who shelters a thief or robber, or assists any man to commit theft or robbery, if he be convicted shall be judged even as these. Any Christian man who is an unbeliever, or deals with magic or poison, and is convicted of it, shall be burnt at the stake."[1]

Again, attempts are made to strengthen criminal justice by securing that the sentences of proscription passed by the lower courts shall be endorsed by the king's court. The judges who have proscribed malefactors are ordered by the Landpeace of 1179 to come into the presence of the emperor, and to ask him of his clemency that he should proscribe them of his own authority. If the gograf proscribes a man, then he must testify the fact to the graf and obtain the graf's proscription, just as the graf in the same manner obtains the proscription of the king.[2] This is the law of the *Sachsenspiegel*. In 1235 Frederick II. makes elaborate preparations for securing the effectiveness of the imperial proscription. A notary is to be appointed who shall keep an Acht-book, and enter the names of those who have been proscribed, or who have been released from proscription, or who

[1] *Ssp.*, ii. 13, sect. 4-7. [2] *Ib.*, i. 71.

are suspected of being evil characters. Had Frederick's dynasty remained undisturbed in Germany, they might have achieved great feats with this imperial black-book. Among other things they might have made their court a high court of criminal appeal, they might have stamped out blood-money, and unified the criminal law. But their power broke up, and they were unable to do these things. In the *Sachsenspiegel* it is said that a Saxon may even dispute a judgment found before the imperial court, and challenge the judge.[1] The old tariff of blood-money exists side by side with the newer penalties. "Every finger and tooth has its own special price." Even as late as the thirteenth century there is one special exception to the general rule, that a man lowers his feudal status by receiving a fief from his equal or inferior, and by doing homage to him. It is when the homage is exacted by the relatives of a murdered man as part of the compensation for homicide.[2] The fact shows that the Landpeaces and the emperors had not been strong enough seriously to change the ethics of feudal anarchy.

Outside the Landpeaces there was hardly any imperial legislation at all for Germany. It might have been expected that some general imperial ordinance would have defined the regalia, or determined the military obligations of the imperial vassals, or placed a limit upon the alienation of imperial property. But although Frederick I. obtained from his Bolognese doctors a full statement of the regalia, which he enjoyed as

[1] *Ssp.*, ii. 12, sect. 8.

[2] Ficker, *Von Heerschilde*, p. 8. In 1227 Bodo of Homburg was murdered. The counts of Everstein and one hundred knights and squires have to become the men of the sons and relations of the murdered man (*Orig. Guelf.*, iii. 689).

Lombard king, no such general declaration was ever made in Germany, and until the treatise of Lupold of Bamberg, in the fourteenth century, the regalia of the emperor were left to be inferred from the charters which gave them away.

Nor have we any legislation affecting the constitutional development of the army. Until the twelfth century the king seems to have had an unlimited right of calling upon his subjects to render military service. Foot and horse followed him to war, and he fixed the strength of the contingents. But since the days of Henry V. the princes shared with the king the right of summons. The strength of the host, the place and time of meeting, the division of the contingents, were all decided with the advice of the Reichstag. The army had begun in the main to be an army of horsemen, a feudal army. A personal summons was issued to the vassals and the *ministeriales* of the Reich. The princes, too, brought up their contingents; the contingents of the imperial towns followed their advocates, those of the princely towns their princes. Many of the allodiaries appear in the field with their own banners. The vassal who denies service to his lord is guilty of felony, and deprived of his fief. The prince who commits a similar offence is held *reus majestatis*, and falls into the imperial Acht. Yet the emperor might grant a dispensation from the host, or consent to take a money payment in lieu of service, and some imperial princes obtained privileges, in virtue of which they were only required to attend certain hosts. The imperial abbeys of Werden and Benedictbeuern had full exemption, and some towns might free themselves by a tax. According to the feudal books the vassals claimed to be liable to service only within the limits

of the empire, or upon the Roman journey. Every vassal had to see to his own provender for six weeks. Water and hay and wood must be supplied to the army free of price. If a feudatory has many lords, he is only bound to follow the lord from whom he has first received the summons, while he pays the other host-money. These rules are to be collected from isolated decisions of the king's court, or from the feudal law-books, which are based upon these decisions, or from observed usage. Of the two extant acts of legislation affecting the army, the *Constitutio de Expeditione Romana* and the *Lex Pacis Castrensis* of Frederick Barbarossa, the first is a demonstrated forgery, while the second is merely a series of police ordinances for the camp, possibly based upon those articles of war which were drawn up by Lewis VII. for the second crusade, but which have not been inserted in the chronicles because they were never observed.[1]

We know that the emperors made attempts to create for themselves an extensive royal domain. The unpopular inquisitions into crown property, undertaken by Conrad II. in Bavaria, by Henry IV. in Saxony, and by Lothair III. throughout Germany;[2] the careful way in which the Hohenstauffen family added castle

[1] The first is printed, Weiland, i., No. 447; the second, Weiland, i., No. 173. It is possible that fresh camp rules were issued in 1189. *Chron. Reg. Col.*, "Ibi [at Pressburg] in die pentecostes imperator conventum habuit et jurata est pax ab omnibus et lex malefactorum lata est et de processu itineris actum est. ... Habita est curia ... ad quam duo nobiles ... pro violata pace decollati sunt." For Lewis VII., Migne, *Patr. Lat.*, vol. 185, col. 1210.

[2] Waitz, viii. 244, 388; Inama-Sternegg, *Deutsche Wirthschaftsgeschichte*, ii. 112; Lamprecht, *F.D.G.*, xxi.; Schröder, p. 517, argues that the *Nürmberger Salbuch*, a fragment of which has been edited by Küster, is probably part of a general inventory of royal property.

to castle among the wooded hills of Swabia, establishes the point. We know, also, that the distinction between imperial property and the private property of the emperor was fully established by the eleventh century, and that it was regarded whenever a change of dynasty took place. Yet in spite of the extreme importance to the emperors of building up a royal domain which should, like the domain of the French kings, serve as a nucleus for the extension of their power, it is a remarkable fact that no limitation was placed to the alienation of imperial property until, by the *Sententia de non alienandis principatibus* in 1216, the princes and barons and *ministeriales* of the royal court decided that no principality could be exchanged, alienated, or transferred except with the will of the presiding prince and the *ministeriales* of the principality. This decision was endorsed by Frederick II., who decreed that no Roman king or emperor should in future be at liberty to alienate any principality from the empire, or to infringe its rights and honours.[1] But still no limitation was placed upon the alienation of imperial rights and properties which did not come under the category of a principality until the fourteenth century.

The results of this neglect were important. Philip of Swabia, in his efforts to purchase the support of the German nobility during the double election, squanders the Swabian domains of his house; Frederick II., to obtain the support of the Church in 1220, and of the nobility against his son in 1231, formally recognizes the rights which had been usurped by the principalities. The great emperor finds himself obliged to capitulate before the princes, to sacrifice to their jealousy the interests of the imperial towns, and to

[1] Weiland, ii., No. 57.

debar himself from many fruitful sources of power and of wealth. The princes, indeed, who have guided the course of German affairs from the twelfth century onwards know their own interests. They put no limit upon imperial munificence so long as they are to obtain the fruits of it, but they will not have the emperor trafficking in principalities. When they find him desiring to exchange two imperial monasteries in Regensburg for some property belonging to the bishop, they slip in and declare that principalities of the empire are inalienable. But further they do not care to go. Although it is a recognized principle enforced over and over again by the imperial courts, that no alienations of the official property of a bishopric are valid, no such rule is applied to the greater mass of the fiscal, judicial, and proprietary rights enjoyed by the crown. The princes do indeed recognize the maxim that regalia cannot be alienated without the emperor's consent, but the maxim is only invoked when they wish to recover rights, which their predecessors in defiance of the maxim have sold. The imperial prerogative is the privilege of the princes; it is an instrument which they occasionally use to suit their own purposes, but which they have no scruple in disregarding. That the crown possesses a great potential store of wealth and influence in the imperial towns is clear to them. They attempt to seal up the perilous fountain. The emperor, who finds the towns openly hostile to him in Lombardy, who has unsuccessfully destroyed municipal autonomy in the kingdom of Sicily, and who is besides under the instant need of echoing the promises which the princes had already extracted from his son, accords his consent. He sacrifices the towns not once but over and over again. In 1226 he annuls the Commune of Cambrai to please

the bishop,[1] and abolishes the podestats, consuls and autonomous organs of government in the towns of Provence.[2] In 1231 he annuls in every city or town of Germany all communes, councils, masters or rectors of citizens, or other officials, who have been appointed by the collective body of the citizens without the consent of the archbishops or bishops, and together with these all confraternities or societies of artizans.[3] He confirms the ecclesiastical and princely despotism over the cities, and boldly annuls all privileges which may ever have been given, all customs which may ever have grown up to their detriment. In 1234 we find him protecting the bishops from their advocates and safeguarding their jurisdictional immunities.[4] In 1238, on the plea that the regalia cannot be enfeoffed without the imperial consent, he enables a bishop of Worms to recover jurisdictional and fiscal rights which had been alienated by his predecessors, and thereby to fortify his control of the city.[5] The dissipation of the Swabian domain by Philip, the surrender of the interests of the towns to the princes by Frederick II. are important steps in the decline of the imperial power in Germany, and a prophet might have foreseen in the events of the thirteenth century the rise of the famous imperial mendicant of later times, for Otto IV. was the first of the emperors who had no considerable landed property in Germany, and who owed his support to foreign gold, and William of Holland, Richard of Cornwall, Alphonse of Castile had even less claim to rank among the territorial nobility of the empire.[6]

[1] Weiland, i., No. 106. [2] *Ib.*, No. 108. [3] *Ib.*, No. 156.
[4] Weiland, ii., No. 187. [5] *Ib.*, ii., No. 212.

[6] William of Holland, Rudolph I., Adolph, and Henry VII. were merely counts. Although, according to the theory of the *Sachsenspiegel*, any free man of legitimate birth and full civil and ecclesiastical rights, without grave corporeal defects, could be chosen, the electors rarely went outside the princes (Schröder, p. 467).

Nothing can be more significant of the way in which the medieval German constitution was formed than the story of the growth of the Electoral College.[1] Right up to the middle of the thirteenth century there were no fixed rules as to the election of the German king. There was an impression that the election should take place upon Frankish soil, just as there was an impression that the monarch should live Frankish law. The designation of the emperor, however, as distinct from the election, often took place elsewhere, and there was no agreement as to the town in which the ceremony was to be held. Now it was at Aix, now at Mainz, now elsewhere, and it was not until after 1257 that it was regularly fixed at Frankfort. Nor was there any rule as to the procedure to be followed by the electoral assembly, or any clear definition as to who should compose it. Imperial princes had certainly the right to attend, even if they were not specially summoned, but even in the beginning of the thirteenth century counts took part in the proceedings, who were not numbered among the princes of the empire. Again, there was no agreement as to the way in which votes should be taken or counted. As a matter of fact they were not numbered but weighed. The most powerful princes carried the day, and their adversaries refused to participate, or withdrew sometimes to elect a counter candidate. Nor was there any legislative act defining the part which the people were to take in these elections. The acclamation of the folk is noticed by the chroniclers until the beginning of the twelfth century, and then we cease to hear of it. The personal homage of the princes [*laudatio, col-*

[1] Lindner, *Die deutschen Königswahlen und die Entstehung des Kurfürstentums*; Schröder, pp. 456-71.

laudatio] takes its place. It was the custom that the election should be declared by the most distinguished member of the meeting, who was called for this occasion the elector. But there was no fixed rule as to who this elector should be, and although the Archbishop of Mainz most frequently officiated in this capacity, yet the election is sometimes declared by others, by the Archbishops of Magdeburg, Cologne and Trèves, by the Palsgrave of the Rhine, and by various dukes. The indefiniteness of the arrangements concerning the election was clearly illustrated in 1190 and 1208, when Germany was divided into two electoral camps.[1] It was clearly necessary that, if the anarchy of these terrible years was to be averted in the future, some precise lines must be laid down for the conduct of the election, but it is thoroughly significant of the character of the medieval empire that these lines were never laid down by an emperor, but were left to be suggested by a private individual.

The author of the *Sachsenspiegel* was a man of views. He was at once ingenious and mystical, practical and pious, and like all the speculative intellects of the Middle Ages, his intellect was besieged by the chimera of abstract symmetry. He had a theory that an electoral assembly was like a Saxon land-court, and just as a Saxon land-court has six judgment-finders who must testify together with the judge, when a man gives away an allod, or bears witness affecting another's right or life or limb, so the electoral assembly must have six special electors, who shall accompany the king to Rome and guarantee the legitimacy of the

[1] The question of precedence was hotly discussed. The Archbishops of Cologne and Trèves declared that the "election" belonged to them. (*Chron. Reg. Col. ad* 1198.)

election.[1] It remained to choose the six. The first step was obvious. Symmetry clearly demanded that three of these should be ecclesiastical and three lay, and Eike von Repgow can have had no hesitation in fixing upon his ecclesiastical electors. He chooses the Archbishops of Mainz, Trèves and Cologne. The Archbishop of Mainz had long been the most important person in the electoral assembly,[2] and the two others had special functions in connection with the coronation.[3] It was more difficult to fix upon the three laymen. The only principle upon which some princes could be preferred to others was that some held high court offices, whilst others did not. At the coronation feast the emperor was attended by his steward, his marshal, his chamberlain and his butler. Unfortunately the number was one too many, and Eike will

[1] He may have been also influenced by the practice, which was sometimes followed, of an archbishop going to Rome to receive his pallium accompanied by his electors (*Chron. Reg. Col. ad* 1157).

[2] Cf. Frederick's reply to the cardinals at Besançon, 1157 (*Chron. Reg. Col. ad* 1157), "Primam vocem regiae electionis episcopo Moguntiensi recognoscimus, regalem consecrationem archiepiscopo Coloniensi permittimus."

[3] *Chron. Reg. Col. ad* 1215, "Vacabat enim hinc temporis Coloniensis ecclesia archiepiscopo, cujus juris erat regem consecrare"; *ib., Cont.* iii. *ad* 1215, "Fridericus, a Syfrido legato apostolicae sedis, Coloniensi archiepiscopo non existente, in regem ungitur et in regali sede collocatur." Alexander confirms to Philip of Cologne the *Consecrationem regum infra limites tuae Dioecesis Fiendam*, 1179. It is confirmed by Urban III., 1187 [*Harzh.*, iii. 429, 30]. The inhabitants of Trèves claimed that to their archbishop belonged the Primacy of the whole of Gaul and Germany. Some verses, said to have been written by St. Sylvester to Agricius, fourth bishop, run:

> "Sume prioratum post Alpes Trebis ubique
> Quem tibi lege nova Roma dat et veteri."
>
> *Gesta Trev.*, c. 18, SS. viii., p. 192.

The Bishop of Trèves was not bound to answer except to the Pope or his *legatus a latere* (*ib.*, c. 23). "Quae licet sanctissimis et nusquam terrarum majoribus episcopis dudum a Deo fuerit insignita, ut non inmevito secunda diceretur" (*Vita Conr. Arch. Trev.*, SS. viii., p. 215).

not violate symmetry. He declares that the first of the lay princes at the election is the Palsgrave of the Rhine, the steward of the empire; the second is the Duke of Saxony, the marshal; the third is the margrave of Brandenburg, the chamberlain. The King of Bohemia, the butler of the kingdom, must be excluded because he is not a German. The election is to be conducted in the old manner, except that the election of the princes is to be declared not by one elector but by seven. The stages are the old stages. There is first the deliberation, then the declaration of the choice of the princes or *electio*, then follows as before the *laudatio*. "The princes all choose the king by name."

Circumstances conspired to give an enormous importance to this literary fancy of an obscure Saxon lawyer. The Germans were helplessly floundering over their elections for want of a few simple rules, and here was a set of rules which had everything to recommend them. They accorded with the practical importance of the chief German principalities; they were symmetrical, and therefore they were argued to be derived from divine institution. They were supported in part by an analogy, in part by a constitutional usage, and therefore in the absence of written legislation they were easily imagined to be fragments of an old tradition.

The wide use of the *Sachsenspiegel* in all quarters of Germany gave general currency to Eike's view of the electorate. Men still quarrelled over details. A southern poet who had been patronized at the court of Wenzel naturally protested against the exclusion of Bohemia, and when the double election of 1257 took place seven electors instead of six appear to have taken the leading part of the proceedings. The Archbishops of Mainz and

Cologne and the Count Palatine of the Rhine voted for Richard of Cornwall. The Archbishop of Trèves, the Duke of Saxony, the Margrave of Brandenburg for Alphonse of Castile. The King of Bohemia voted now for one and now for the other. Yet the chief electors were not quite comfortable with the arrangement, although in accordance with previous usage they had proceeded to the choice after deliberation with the princes and nobles. The party of Richard asked the Pope to give his sanction to the practice of entrusting the "election" to a college of seven.

In 1263 Pope Urban IV. referred to the contents of this appeal in two letters addressed to Alphonse and Richard, without in any way gainsaying it. It was assumed that the sanction of the Curia was given, and between 1257 and 1266 statues of the seven electors were erected in the old Rathhaus at Aix. In the commentary of Henry of Segusia, Cardinal of Ostia, to the *Bull Venerabilem*, which was written at any rate before 1271, the author accepts the electoral college of seven, but he remarks at the same time that, according to the opinion of some, the King of Bohemia is not necessary except where the electors disagree, and that although he does at the present moment as a matter of fact belong to the electoral body, his right to do so is not ancient.

The proceedings of 1257 had settled that the electors were to be seven, not six, and apart from other considerations the number seven was so sacred as to be convincing. There was still, however, some doubt as to who should fill the seventh place. The Bavarian party, supported by the *Schwabenspiegel* and the author of *Lohengrin*, claimed the electoral vote and the stewardship as well for Bavaria. When Rudolph of Swabia was elected in 1273, the Duke of Bavaria appealed to the

Pope and complained to Rudolph, but the King of Bohemia held his own, and in 1289-90 he received from King Rudolph an express recognition of his stewardship. It was the first contribution of the monarchy to the settlement of this important institution.

There is one other curious constitutional doctrine which owes its origin to a purely private speculation. In the *Golden Bull* of 1356 it is stated that the right of passing judgment over the king belongs only to a Reichstag, which is presided over by the Count Palatine. This doctrine too can be traced back to a series of statements made by Eike von Repgow in the *Sachsenspiegel*, which have apparently no traditional authority whatever to support them.

"The king," he says, "shall have Frankish law when he is chosen, whatsoever be his birthplace: And just as the Frank cannot forfeit his life unless he be taken in the act, or has forfeited his Frankish law, so too no man may bring an accusation affecting the king's life unless his kingdom has first been adjudged forfeit." And again, when a man complains of a judge, the judge shall answer before the Schultheiss, since the Schultheiss is the judge of his guilt. Just so the Palsgrave is the judge of the emperor and the Burgrave of the margrave.[1]

It will be seen that Eike here again is influenced by the analogy of his East Saxon land-court. The Schultheiss is the count's vicar; the Count Palatine is the emperor's vicar; the Schultheiss hears complaints against the count; the Count Palatine hears complaints against the king. The *Schwabenspiegel* re-echoes the theory. In 1263 Pope Urban IV. speaks of the Count Palatine as arbitrator in cases of disputed elections, and in 1274 a decision of the imperial court determines

[1] *Ssp.*, iii., 54. 4, 52. 3.

that, if the king brings an action against a prince concerning imperial property, which belongs to the fisc, or other injuries which have been inflicted upon the kingdom or the king, the action is to be heard by the Count Palatine as representative of the imperial court. If it may be assumed that the decision carries with it the converse case of an action brought by a prince against the king, it goes some way to give an official sanction to the doctrine so boldly laid down by the Saxon jurist. It is, however, a curious fact that the hypothesis upon which Eike founded his theory that the Count Palatine was the Schultheiss or vicar of the emperor was a long time in gaining general recognition.

We have no evidence to suggest that before the *Sachsenspiegel* was written the Count Palatine was ever considered as imperial vicar, even during a vacancy. The first evidence we have of such a view belongs to the later half of the thirteenth century, to 1254, 1266, 1267, and 1277. And even this view was not uncontested, for the Duke of Saxony claimed a concurrent right, perhaps in virtue of his Saxon palatinate. It was not until the end of the fourteenth century that the Count Palatine made good his claim to represent the empire at other times as well. In 1375 he obtained from Charles IV. a recognition for himself and his successors of his position as imperial vicar during the Roman journey; and when King Wenzel was captured by the Bohemians in 1394, the Count Palatine, of his own authority, proclaimed himself vicegerent of the empire. In the end the theories of Eike triumphed, and their triumph is a signal instance of the haphazard way in which the medieval constitution of the empire was formed.

The historian of Frederick I., in a famous passage, turns aside from the main theme of his narrative to give an account of the kingdom of Hungary. After commenting upon the deficiencies of a civilization set in one of the most opulent plains of Europe, comparable in wealth to Paradise or to Egypt, after condemning the hideosity of the inhabitants, the rudeness and ferocity of their manners, the rustic coarseness of their speech, the rarity of towns, the houses of wattle or wood, the barbaric preference for hunting to agriculture, he goes on to speak of the virtues of the Hungarian polity. "Yet in this they imitate the skill of the Greeks that they attempt nothing without frequent and long consultation. . . . The chief men come to the king's court, carrying their seats with them, and discuss the affairs of state, and in the winter the discussions are carried on in their houses. They obey their king so completely that everyone holds it to be wrong not only to exasperate him by open contradiction, but even to wound him in a secret whisper. Hence, although the aforesaid kingdom is divided into seventy or more counties, two-thirds of all judicial fees go to the king, and one-third alone remains for the count, and no one in all that spacious country dares to have mint or toll except the king. And if any one of the order of counts offend the king even slightly, or be accused, however unjustly, of having done so, any messenger of the court, however low his condition, takes him single-handed, though he be surrounded by his satellites, and puts him to all kinds of torture. It is not the custom there, as it is with us, for the king to ask a sentence of the peers. The accused is not allowed to defend himself, but the will of the prince is held by all to be reason. If the king wishes to lead out his army, all follow him

obediently as one man. The husbandmen, who remain behind in the villages, choose and equip representatives for the host, while the others till the soil. Sometimes every nine men choose a tenth, or every seven men an eighth, or the groups may be still smaller if necessary. But those who belong to the rank of knights will not dare to remain at home except for the gravest reason. The person of the prince is guarded by the strangers [*hospites*], of whom there are a great number, and who are styled princes."[1]

This was no fancy picture.[2] In the eleventh and twelfth centuries, while the emperors were engaged in their Slavonic and Italian and religious wars, a series of legislators had built up the Hungarian constitution. Stephen had introduced the county organization of Germany, and, in the compilation of his laws, had freely borrowed from the old German codes, from the capitularies, and from the decrees of councils. In every county there was a royal town as the centre of the administration, and a count, named by the king, to exercise military, financial, and judicial authority. The king takes two-thirds of the revenues of the counties, the count one-third. A royal senate, composed of the bishops and counts and other high officials, assists the king in the making of laws.

Conscious of the barbarism of his people, the king takes pains to attract foreigners. "The Roman Empire," he observes, "first grew, and kings were made great and glorious because many noble and wise men met together from different parts. Rome would be now a

[1] Otto Fris., *Gesta Frid.*, i. 31.

[2] *S. Stephani Regis de Morum institutione ad Emericum ducem Liber*; *S. Ladislai Regis Decreta*; *Decretum Colomanni Regis*; Endlicher, *Monumenta Arpadiana.*

servant unless the sons of Aeneas had made her free. For as strangers came from different parts and provinces, so they bring with them different tongues and customs, and different documents and arms, and all this gives ornament and magnificence to a royal court, and terrifies the arrogance of foreigners, for a kingdom of one tongue and one custom is weak and fragile."[1] In the laws of Stephen and of his successors, the aliens or *hospites* form a privileged class. The ecclesiastical organization dates, too, from Stephen, who is as minute and peremptory in his provisions for Church endowment and the enforcement of fasts as Charles the Great. From him, too, springs the Hungarian penal code, which punishes conspiracy against the life of the king, or treason against the lord, by death, or, in case of escape, by confiscation. Ladislaus I. [1077-95] and Coloman [1095-1114] legislated on the same lines. They fortified the military, the judicial, and the fiscal systems. Royal agents went round the local courts to view frankpledge and to punish theft; and till Coloman established biennial courts in each diocese, it appeared that every case of any consequence came to the royal capital at Gran. Whithersoever the king travelled, he was accompanied by two judges, against whom an appeal lay to the Count Palatine, who seems to have acted both as a justiciar and as a high treasurer. Hüber has truly remarked that no contemporary state enjoyed so complete a system of direct taxation as Hungary.[2] Every foreigner inhabiting town land paid a tax of eightpence or military service. A like tax fell upon all townsfolk who worked by the week. Free

[1] Endlicher, *Mon. Arp.*, pp. 805-6.

[2] Hüber, *Geschichte Osterreiches*, vol. i., pp. 149-55; *Mitt. d. Inst. f. Ost. Geschichtsforschung*, 1885.

men and foreigners, and there was large Slavonic infusion in the population, working on other men's lands, paid a poll-tax. Every freeman, who was bound by custom to supply the king with horses, waggons, and servants, paid fourpence. All the fisheries, except those which had been given away by Stephen, belonged to the king. Imports and exports paid duties at the frontier; and the count who collected the tribute of his county was obliged to send it to Gran by Michaelmas, with a fully written statement of his receipts. Then a partition was made of the whole revenue. The counts and the hundredmen receive their share, and the rest goes to the king. Of such systematic and sensible legislation there was no trace in Germany.

CHAPTER V.

THE IMPERIAL COURT AND THE LAW OF INHERITANCE.

PERHAPS the best test of the strength of a medieval government is to be found in its influence on the law of inheritance. The reason is not far to seek. In medieval times most of the services rendered to the State were based upon the tenure of land. The extent to which this was the case varied with times and places. The supreme legislative council might or might not at any given moment be composed of tenants-in-chief of the crown; the judicial work might or might not be mainly done in a series of courts adjusted to the various grades of tenure; the army might or might not be wholly composed of military tenants. The financial resources of the monarch might be derived in varying measures from his position as supreme landlord. All the land in the country, or only a portion of it, might be brought under the feudal formula, that is to say, might be held directly or indirectly of the crown. But though the degrees to which the feudal principles affected the mechanism of government varied indefinitely, there was no medieval state in which a substantial part of the public service was not guaranteed by what was after all the most substantial of guarantees, seeing that it could not be annihilated or

diminished—the land. Every medieval government, then, had an interest in securing the conditions under which these services could be rendered to it most simply and most securely. Now, there is no question as to what the simplest and the most secure conditions were. It was clearly simplest, in the first place, to have a centralized land system. Every scrap of land in the country must be brought under the formula of dependent tenure, must be held directly or indirectly of the crown. In the second place, it was clearly expedient to insist upon the rule of impartible succession. The fiefs held of the crown, directly or indirectly, must not be divided at the good pleasure of the tenant. The number of those with whom the king has to treat must not be indefinitely multiplied, or the responsibility for the payment of services indefinitely diffused. Many of these fiefs involve important political and jurisdictional duties, and the interests of the community on the whole demand that the responsibility for the discharge of these functions shall not be indefinitely subdivided. Many of them, again, involve the duty of providing cavalry service, and it is well that the quality of the fighting man shall not be impaired by the impoverishment consequent upon the subdivision of the fief. Thirdly, it is well that there should not only be impartible succession, but that there should be some fixed rule as to the person to whom the succession should go. And the most convenient rule is that it should go to the eldest son, who, on an average reckoning, will be most capable of discharging the service of the fief.

Now, it is by no means easy to secure these conditions. They conflict with one of the most fundamental instincts of man, or else they demand emancipation from one of

the most persistent intellectual confusions which has ever possessed the human mind—the confusion between sovereignty and property, between public and private rights. For either you must run counter to that deep-seated sense of justice and family feeling which both in the Roman law and in the early Germanic codes demanded equal partition, or else you must draw a line between office and property, between political and private powers, and decide that the political rights are impartible, in contradistinction to the private rights which are partible. The strong governments of Medieval Europe cut the Gordian knot. By the time of Henry III. of England the land system of England had become centralized, and the strong royal court had imprinted impartible succession and primogeniture upon the English land law. Even at the end of the twelfth century the old rule of equal division only applied to a small and to a rapidly vanishing class. The law which had originally governed the inheritances of the great military tenants had been extended by the uniform pressure of the central court to the inheritance of the smaller tenants as well. The king's lawyers had obliterated social distinctions.[1]

The stream of German history ran otherwise. The land system was never centralized. Impartible succession was for a time insisted on firstly for all official fiefs, then for all princely fiefs, then not even for these. In the second half of the thirteenth century principalities are carved up by their proprietors like patrimonial goods. There is partition in Bavaria and Nassau in 1255, in

[1] As Professor Maitland says, "Nor must we fail to notice that here as elsewhere it generalized the law of the great folk and made it common law for all free and lawful men. . . . When we balance the account of our primogenitary law, we must remember that it obliterated class distinctions" (*H.E.L.*, ii., pp. 259-272).

Anhalt 1256, in Brandenburg 1258, in Brunswick 1267, in Saxony 1272, in Hesse 1276, in Meissen 1285.[1] The rule of primogeniture which had been largely followed in many of the princely houses, among the dukes of Upper Lorraine, the margraves of Thuringia, the dukes of the Billunger House in Saxony, the dukes of the Ortenburg House in Carinthia, which had been insisted on by many ecclesiastical foundations, when defining the position of their advocates, and by many lords and spiritual corporations, when regulating the status of their *ministeriales*, rapidly loses ground in the course of the thirteenth century. It had never occupied a very wide territory. At the end of the Hohenstauffen period it has lost much of that which it had with difficulty conquered.

Thus it will be seen that the development of the land law in Germany is less regular than in England, less continuous, less simple. The country for a time had attempted to walk in the straight way of impartibility and primogeniture, but then the path of virtue proved too hard. The old instinct of partibility recovered its sway. Now there may have been contributory causes. The influence of Roman law in the thirteenth century may have been a contributory cause making for partibility, just as the influence of Burgundian law in the eleventh and twelfth centuries may have been a contributory cause making for impartibility in Lorraine and along the valley of the Rhine. But the main cause is to be sought in the strength or rather in the absence of strength of the central government. If Germany was open to the wayward solicitations of foreign law and custom, it was because the imperial court of Germany had no sufficiently

[1] Blondel, *La politique de Frederick II. en Allemagne*, p. 198; Schulze, *Das Recht der Erstgeburt*, pp. 228, 229.

robust system of its own to provide and to enforce. All contributory causes are results of this central negative fact. If it may be said that there was more anarchy in Germany than in England because there was less feudalism, it may also be said that there was less feudalism because there was less government.

There was undoubtedly less feudalism, if feudalism be understood in the strictly legal sense. The maxim "Nulle terre sans seigneur" never found its way into the country. Side by side with the military fiefs there survived much allodial property. Some remote parts of Germany, Dithmarsh for instance, remained untouched by feudalism right through the Middle Ages. There was a large free peasantry in Saxony, at any rate till the wars of the eleventh century, nor were the armies of the empire entirely composed of cavalry until the age of the Hohenstauffen. The feudal principle, in other words, had not completely got hold of the German land. Nor had the feudal principle completely invaded the organs of government. The princes followed the king in war and attended his court in peace, in virtue of a national rather than a feudal obligation. If a duke of Bavaria, for instance, marched after the king's banner across the Alps, he did so because he held a county, not because he held a fief. Although there were feudal tenants of the empire who received a personal summons to the host, strong traces of the older Carolingian military organization survive far into the Middle Ages. The army was marshalled in groups corresponding to the four nations, and each nation was led by its duke. Even the *Schwabenspiegel* at the end of the thirteenth century knows of people who have no imperial fiefs and who are yet summoned to attend the host. The oath taken by the soldiers to be true

to one another—an oath taken as late as the days of Henry IV.—shows that the old popular idea of military service was still a living thing; that the loose bond of military union, typical of the German forays and wanderings of early days, had not yet been superseded by the more special obligations of the vassal to the lord and of the lord to the vassal. The towns too were summoned as corporations, not as units in a feudal hierarchy, and the punishment incurred by a prince for failure to perform his military duty was not the loss of his fief, the proper penalty for dereliction of duty towards a feudal superior, but the proscription which was consequent upon treason against the state. Here then we have the first distinctive feature of the German land system. It is never completely feudalized. There are fiefs and there are allods. Over and against the Landrecht there is the Lehnrecht. Over and against the feudal system there is the Carolingian system. Over and against the feudatories there are the nations.

Now if the German kings of the tenth and eleventh centuries had wished to found their government upon a feudal basis, they could not have done so. But as a matter of fact it would never have occurred to them to do so: they never wished to do so. They aimed at doing something very different. They aimed at establishing their power upon the support of the Church. The fact that the four earliest emperors were Saxons, that they came from just that part of Germany which was least affected by feudalism, and which sent straw-hatted peasants into the field instead of mailed knights, that they exercised little real power outside Saxony and Franconia, that they were strongly imbued with ecclesiastical and Roman influences, that the most

obvious traditions of government were the Carolingian traditions, may have contributed to this result. At any rate the policy of the Ottos is to govern through the Church, and to enrich the Church. The Church supplies them with civil servants and soldiers and money and food and masses. So long as they retain the Church patronage they can rule. We need only here mention two consequences. Firstly, the war of the Investitures was one of the fruits of the Ottonian donations, and the paralysis of the central power in Germany was one of the results of the war of the Investitures. Secondly, the Ottonian policy was carried on by the monarchs of the Salian House. The results were two. Not only was no German sovereign of the eleventh century placed in a position in which, like William the Conqueror, he could say that all land must be held mediately or immediately of himself, but no German king of the eleventh century was under any pressing temptation to attempt such a feat, for the main instrument of government and of governmental wealth was still the Church. It is true, indeed, that the sovereign may, during this period, have exercised some influence over the law of inheritance. In the first place, he was in the main successful in maintaining the official, and consequently the impartible, nature of the duchies. In the second place, as the greatest and the wealthiest of feoffors, he was able to extend the feudal *régime*. But with these limitations it is extremely doubtful, whether any real influence over the course of the law of inheritance was exercised by the crown in the eleventh century. The crown failed completely to preserve the official character of the counties. They became hereditary, they became partible. It has indeed been held that the heredity of

non-princely fiefs in Germany dates from a decree of Conrad II. It has been held that this supposed decree was actuated by the desire to strengthen the lower ranks of the nobility against the duchies, and to pave the way for the foundation of an hereditary monarchy by the concession of the hereditary principle to the largest class of German landowners. Others have seen in it a deep design of balancing class against class, of minimizing the conflicts between the empire and the nobility, of obtaining the harmonious co-operation of all the military forces of the country. It has been inferred from the loyalty of the Swabian knights to Conrad during the revolt of Duke Ernest in 1027—the first time in German history in which a ducal revolt was defeated by the almost unanimous resistance of the nobility of the duchy, from the inability of Duke Adalbero of Carinthia to obtain support in his own county after his deposition, from the multiplication of instances in which we find counts naming themselves after castles and towns in Swabia, Franconia, and Lorraine, from the increased presence of lay feudatories in the councils of princes, especially of ecclesiastical princes, that Conrad had something real to offer, and that his policy of concession was justified in the event.[1] But these arguments are not decisive. Conrad's Italian edict has come down to us, and its date is certain. It belongs to the year 1037. But we have no German edict in writing. It is possible that the policy of the king was merely collected by his biographer from the facts of his reign, from the numerous instances in which fiefs were allowed to descend from father to son.[2] It is possible that it was expressed in a speech held before

[1] Bresslau, *Konrad II.*, ii., pp. 368-74.

[2] Several instances are given by Bresslau, vol. ii., pp. 369, 70.

the council, or that it was the result of a formally recorded sentence of the imperial court, or of a few informal words.[1] "The emperor says we may have our father's fief." Such news might spread rapidly. But we have no evidence to show how great an influence was exercised by this announcement. The fact that we have more evidence of county family names, of knightly activity at princely councils in the eleventh than in the tenth century, proves nothing unless we assume that our tenth century evidence has no *lacunae*. Even with this assumption granted, it fails to demonstrate the origin of the tendency which it illustrates. It shows us that the smaller nobility were becoming more settled, were being worked into the fabric of princely government. It fails to show us what part, if any, royal decree or policy played in the process. The argument drawn from the rebellion of Duke Ernest reposes upon the assumption that Conrad made his declaration prior to 1027; but we have no evidence as to the time when the declaration was made, and it may have been, not the cause which predisposed the knights to side with the emperor, but a nominal reward offered to the Swabian nobility after the submission of the duke. The argument drawn from the case of the Duke of Carinthia is an argument *ex silentio*. In any case, whether Conrad was merely, as is most probable, confirming a usage which had already become general, or sanctioning a usage which had not become general, he was swimming with the tide. The tendency towards heredity was too strong to be resisted. If we make exception of the duchies, the greater fiefs had already become hereditary, despite any efforts that the monarchy might make to preserve their feudal character.

[1] Giesebrecht, ii. 284; Waitz, vi. 415.

It was only natural that the smaller fiefs should follow suit. If Conrad did not consecrate the practice, he merely precipitated it.

With the twelfth century Germany enters upon the feudal age. Of all the German emperors it might reasonably be expected that Frederick Barbarossa would leave the deepest mark upon feudal law, and consequently upon the law of inheritance. He was the ideal German knight, adventurous and munificent. His court was brilliant, his popularity great, his influence wide, his reign synchronized with the spread of French manners and French chivalry in Germany; his policy was continuously directed towards the glorification of the empire. Although he still relied upon the Church to furnish his armies and his purse, he relied still more upon the imperial knights and *ministeriales*.

Further, he was a man who saw the value of the feudal contract as an instrument of government. In all the corners of his empire we find him creating fiefs and defining feudal obligations. In 1152 it is Duke Bertolf of Zähringen who is given the land of Burgundy and Provence upon condition that he shall attend the king with a thousand mailed knights, so long as the king abides in those lands, and that he shall bring to the Italian expedition five hundred mailed knights and fifty arbalesters. In 1184 there is a similar compact between the emperor and Baldwin of Hainault. The Count of Hainault surrenders to the empire the whole allod of Henry, Count of Namur and of Luxemburg, his uncle, with its abbeys, its churches, and all its appurtenances. Then the emperor grants these allods and all the fiefs formerly in possession of Henry of Namur and Luxemburg to the Count of Hainault as a fief; makes this fief an imperial march, to be held of the emperor, and

declares that in virtue of this fief the Count of Hainault shall be held a prince and a liegeman of the empire and shall enjoy the privilege of princes of the empire.[1] In all the emperor's dealings with the Italian towns we find him proceeding upon the assumption that he is supreme landlord in Italy, capable of granting fiefs both in Italy and in the yet unconquered kingdom of Sicily upon the condition of services to be received.

Everywhere too he insists upon the close personal connection between the emperor and his tenant-in-chief. The Count of Forcalquier "has contumaciously neglected to come to our court and to receive his benefice from our hands. His county has by a just sentence been so adjudged to us that we may do with it what we will."[2] Like Lewis XIV. Frederick valued the prestige of a brilliant court, but Lewis used his court to deaden, Frederick to quicken, the life of feudalism. It was part of Frederick's general policy to multiply and define feudal relations, to insist upon the strict feudal theory, to preserve so far as he might the official character of the jurisdictional fief.[3] He even violated established practice, and ran the risk of alienating the German church in his effort to widen and strengthen the feudal net. He laid claim to the *jus spolii*, or the right of confiscating the movables of a deceased spiritual prince, as far as these movables depended on fiefs held of the empire.

Yet Frederick Barbarossa was not in a position to do in Germany what Henry II., his contemporary, was in a position to do in England. Henry II. was able practically to make primogeniture the general rule of inheritance in England. Frederick could not do that. The feat which he could and did attempt was perhaps more

[1] Weiland, i., Nos. 141, 298. [2] *Ib.*, i., No. 216. [3] *Ib.*, i., No. 241.

difficult, but it was attempted for a narrower circle, and it was destined to have little permanent importance. In a decree issued at Roncaglia in 1158, but undoubtedly intended to apply to Germany as well as to Italy, Frederick rules that duchies, marquisates, and counties are in future to be impartible. He does not attempt to lay down a general rule of inheritance. He contents himself with the gallant but forlorn attempt to enforce the difficult distinction between the official and the non-official fief.[1]

Now, why was it that Frederick was not in a position to do what the Curia Regis of England did in fact, about the same time, succeed in doing? The answer is twofold. In the first place, as we have seen, the German monarchy of the tenth and eleventh centuries rested in the main for its support upon ancient national obligations. The feudal system was something extraneous and limited, and hence when feudal law comes to be written down in the text-books of the thirteenth century it is a very special, a very privileged kind of law.[2] It is a law applying not to all land or even to all fiefs, but only to military fiefs held directly or indirectly of the empire by military vassals

[1] This distinction was observed in Normandy, where government was strong. *Grand Coutumier de Normandie*, c. xxvi., pp. 79, 80, "Impartibilis dicitur hereditas in qua divisionem nullam inter fratres consuetudo patriae patitur sustineri ut feoda loricae, comitatus, baroniae et sergenteriae." In Brittany primogeniture was established by an assize of Count Geoffrey [*Nouvelle Révue Historique du Droit*, 1887, pp. 117 ff., 652 ff], and it is found in the customs of Vermandois, Hainault, Maine, and Anjou, modified occasionally by a usufruct permitted to the cadets [Esmein, *Hist. du Droit Français*, pp. 204-208].

[2] The *Richsteig Lehnrecht* says plainly that feudal law was given for nobles [*eddeler lude*], 81. Borgrecht, the law regulating castle or town-fiefs [*urbana beneficia, beneficia vulgaria, castrensia*], is contrasted with Lehnrecht [*Sach. Lehnrecht*, 71, 10; 72, 3; *Richsteig*, 31, 1-5; cf. Homeyer, ii. 552.

of knightly birth. In the second place, this feudal law was made and administered in feudal courts. If a question concerning a fief arose between a lord and his man it went before a court of the lords feudatories in the first instance, and ultimately before the court of the princes of the empire, and the princes held directly of the emperor. There was thus a barrier raised between the feudal law and land law, between feudal courts and land courts. The rules of succession which held good with regard to fiefs did not hold good with regard to allods, and *vice versa*. There was no professional body of judges round the emperor ready to discard social distinctions and to generalize the law of the great men. The emperor had to do what he could. He had to try to save the official fief from the anarchy of partible succession. How far was he successful?

Now, if we confine our attention to the law-books of the thirteenth century, we may easily come to the conclusion that not only did Frederick succeed in this attempt, but that the emperors were on the whole successful in stamping the necessities of the state upon feudal law. Careful distinctions are made between various kinds of fiefs. There are, in the first place, fiefs carved by individuals out of their own allods [*Lehen an eigen*]. Then there are judicial fiefs [*Gerichtslehen*]. Thirdly, there are sceptre fiefs and banner fiefs [*Furstenlehen, Fahnlehen*].[1] Fourthly, there are burg fiefs [*Burglehen*]. And then, crossing these distinctions, there is the classification into true

[1] Fiefs were conferred upon spiritual princes by sceptre; but secular princely fiefs were conferred by the banner (Homeyer, ii., p. 547). But prelates sometimes received banner fiefs; *e.g.* the Archbishop of Cologne in 1180 so receives part of the duchy of Westphalia.

fiefs, the fiefs held by those who have the Heerschild, the fiefs to which Lehnrecht properly applies, and the inferior fiefs held by those who have not the Heerschild. Further, it is apparent from the law-books that, however much influenced this classification may have been by the sentiment of aristocratic exclusiveness, it is also largely determined by the interest of the emperor in the securing the maximum of feudal service. It will be easiest to illustrate this by quoting some of the rules:

1. A man is bound to do the same service to his lord, if he have a fief carved from his allod, as he is bound to render if his fief be taken from the empire [*Sachs. Lehnr.*, 69. 8].

4. No man may have a jurisdictional fief if he be not "Schopenbar free," and do homage to the king according to a free man's right[1] [*Sachs. Landr.*, iii. 54].

5. The princes of the empire shall have no layman as lord except the king [*Sachs. Landr.*, iii. 58; *Lehnr.*, 71. 21].

6. The king shall enfeoff bishops' property and banner fiefs entire, and shall not divide them [*Sachs. Lehnr.*, 20. 5].

7. A principality may not lawfully be enfeoffed to two men. If it happen, neither may lawfully call themselves princes on account of the fief. Also margraviates and palsgraviates and counties may not be divided. Those who divide them lose their title [*Schwab. Landr.*, c. 100].

3. Jurisdictions may not be enfeoffed or partitioned so as to be heritable, and to injure the people of the land [*Sachs. Landr.*, iii. 53. 3;[2] *Sachs. Lehnr.*, 71-3].

4. If a count enfeoff his county in part or an advocate his advocacy, that is against right. The feoffee may not have the king's ban over it [*Sachs. Landr.*, iii. 64. 5].

5. Two men may not have a common fief in a jurisdiction [*Sachs. Lehnr.*, 71. 4].

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[1] The term *scepenbare vri man* seems to have been invented by Eike von Repgow to denote the free noble who had become a *ministerialis*, but retained his right to act as judge in the County Court (Schröder, p. 432).

[2] For an ingenious attempt to explain an obscure reservation affixed to this rule, which it has not been necessary to print here, cf. Schulze, *Recht des Erstgeburt*, p. 106.

6. If a man has a jurisdictional fief from the king, it may not descend to the fourth hand [*i.e.* it can only be enfeoffed from the king to A and from A to B] except in the case of a Schultheissthum[1] in a county, because no count may [*Sachs. Lehnr.*, 71. 1] judge without an enfeoffed Schultheiss. If a man has a jurisdictional fief from the king, the fief may not come to the fourth hand. True fiefs rightly come to the seventh hand, because the Heerschilds are seven [*Schwab. Lehnr.*, 133].

7. No fief can descend except from father to son [*Sachs. Lehnr.*, 21. 3].

8. The lord is not bound to enfeoff more children than one, of their father's property when he dies. Within a year and a day they can choose that the lord should enfeoff whomsoever they will. If that space have elapsed, the choice belongs to the lord [*Sachs. Lehnr.*, 29. 2; *Schwab. Lehnr.*, 58. 4-6; 60. 1, 2].

9. The lord need not answer except to one son for his father's benefice [*Auctor Vetus De Ben.*, i. 79].

Here then we see preserved certain very valuable principles: the impartibility of princely fiefs and of jurisdictional fiefs; a limit to jurisdictional subinfeudation; a veto upon the mediatization of principalities; the exclusion of collaterals and ascendants and females from feudal inheritance; the representation of the fief by an individual.[2] But this is not all. The clergy has been swept into the feudal net. The ecclesiastical prince, even the imperial abbess, is *Lehensfähig*, capable of receiving a true fief. So distinctly is the ecclesiastical prince conceived of as a feudatory that he may not renew the fiefs of his see before investiture, that even after

[1] The Schultheiss was the count's delegate or vicar. The term is often used quite generally to denote a vicar or vicegerent, *e.g.* Hermann Billung is called a Schultheiss [*M.G. Deutsche Chroniken*, ii. 473]. For a commentary on the passage in the *Sachsenspiegel*, cf. Schröder in the *Zeitschrift des Savigny Stiftung*, vol. v., p. 49.

[2] "De consuetudine imperii non succedit nisi filius descendens. Imo revertitur feodum ad imperatorem; sic vidi hoc quando fui in Alamannia per proceres judicari" [Leo Hostiensis, *Summa de feodis*; Schilter, *Codex juris Alamannici feud.*, cap. 43, sect. 2].

investiture he may not alienate or pledge or contract debts which shall bind his successor, without royal consent, that in case of felony his regalia are confiscated. Again, it is clear that the presiding influence in the shaping of this feudal law has been the desire to secure and to define the imperial service or Reichsdienst.

It is this which constitutes the division between the true fief and the fief which is not true. The Lehnsmann does imperial service, host service and court service. The Borgmann does not. As we read the feudal books we are tempted to ask, Is not this the real legislative monument bequeathed by the Hohenstauffen to Germany, a monument constructed not so much by express ordinance as by decisions given in the court of princes, by a policy clearly envisaged and resolutely pursued? Were not the glossators of the fourteenth century true to the spirit of history when they ascribed the Saxon Lehnrecht to Frederick Barbarossa and the Saxon Landrecht to a privilege of Charles the Great? Was not everything making clearly for the establishment of the strict primogenitary rule? Yet a closer scrutiny reveals the weak points of the feudal edifice even as portrayed in the text-books. It is true that in principle collaterals are excluded, and the fief descends from father to son. As a matter of fact, not only is the emperor himself constantly violating the rule, making for instance the duchy of Austria in 1186, the margraviate of Namur in 1184, descendible to collaterals, but nothing is more common than joint enfeoffment, than the simultaneou investitures of brothers or of children with a father.[1] If the eldest of a number of brothers receives a fief, that shall not harm the other children, they all have right in the fief

[1] Rules as to the "Gesammte Hand" may be found in *Sachs. Lehnr.*, 8. 1, 23. 1-4; *Schwab. Lehnr.*, 2. 3, 16. 2, 3; cf. Homeyer, ii., pp. 457-469.

which the eldest brother has.[1] The eldest is not the sole feoffee; he is merely the representative of his brothers. He is in the German phrase the *Lehenträger*, not the sole heir.

The principle of community, of partibility was too strongly rooted in German habits to be overcome by any feudal theory, however desirable from a public point of view.[2] Instead of the Lehnrecht invading the Landrecht, the Landrecht invades the Lehnrecht. Instead of the emperor's court extending the impartible feudal rule outside the feudal circle, it does not even maintain it within the feudal circle. The consequences are far reaching. The Landrecht had allies in the Lombard feudal law, which acknowledged the partibility of the smaller private fiefs; in the Roman law, which acknowledged equal division; in the decline of the imperial power in Germany after the death of Barbarossa; in the success with which the princes established the patrimonial character of their principalities.[3] In 1231 joint investiture is applied by an emperor to a princely fief, to the Margraviate of Brandenburg. Then came the age of partitions, in which strict feudal theory was thrown to the winds. The *Schwabenspiegel*, which was written about 1278, reiterates the old saw about the impartibility of princely fiefs, but the note of confidence has disappeared. It acknowledges that fiefs are partitioned. It can only vainly protest that the partitioners have lost their claim to the title which goes with the fief. The emperors had ceased to try to swim against the stream, and Barbarossa himself

[1] Ruprecht, ii. 11, quoted by Schulze.

[2] The popularity of the arrangement is illustrated by a passage quoted by Schulze: "Germanos nobiles viros hereditatem patris aut matris suae habuisse non inter se divisam sed communiter sine divisione sicut amabiles fratres Dei amore usitare debuerunt."

[3] Schulze, pp. 228-235.

had been forced by political exigencies to violate his own principles. He had divided up the duchies of Bavaria and Saxony. Germany had become a federation of princes, and it was now to the imperial interest that each principality should be as small and as weak as possible. "So then," says Homeyer, "the natural tendency of the feudal law towards impartibility has been conquered by the power of the principle of the Landrecht. The vassals have reaped the advantage. The right of primogeniture only built itself up in exceptional cases and as the result of exceptional circumstances."[1] We may add to this that where primogeniture does occur, it is almost always the sign that some exceptional force has been exerted to counteract the tendency towards partition.[2] The impartibility of Austria was preserved by a great manifestation of popular feeling, which has been recorded in the curious verses of Ottokar von Horneck.[3] If the primogenitary rule is enforced in many codes of Dienstrecht, it is because the lord's control of his *ministeriales* is exceptionally strong.[4] If the Austrian Landrecht declares that the eldest son shall have the advocacy, it is due to the fact that the Babenberg dukes, who were the advocates of most of the Austrian monasteries, were willing to accept the monastic terms.[5] If the primogenitary rule is often found to apply to castle fiefs, it is partly due to the fact that the holders of such fiefs [*castrenses*] were often socially unimportant, partly to the extreme inconvenience of dividing the

[1] Homeyer, ii., p. 465.

[2] As Schulze, p. 209, remarks: "Je straffes ein höher stehendes oberherrliches Recht in die Verhältnisse der Besitzes eingreift, um so häufiger finden wir untheilbarkeit des Besitzes und Individualsuccession vorgeschrieben."

[3] *Oesterreisische Reimchronik*, cap. 200; cf. Schulze, p. 113 *seq.*

[4] Schulze, p. 208.

[5] *Oest. Landr.*, 59, "Der eltest unter den erben sol die vogtai haben."

responsibility for castle guard.[1] But from whatever source the pressure came, it did not come from the imperial court.[2]

[1] Homeyer, ii., pp. 552-562.

[2] It does not fall within our limits to define the bounds within which the principles laid down in the Lehnrecht operated in Germany after the break up of the imperial power. The obvious convenience of preventing jurisdictional partition secured a certain respect for the rule forbidding it. Cf. Decision of Archbishop Conrad of Magdeburg, 1270 [Ledebur, *Allg. Archiv f. d. Geschichtsk. d. preuss. Staates*, xviii. 52], "Item diffinimus quod in comitia comes esse non debeat nisi unus."

CHAPTER VI.

IMPERIAL FINANCE.

If a monarchy is to be strong, it must at any rate be able to pay its way. It must have financial resources. Now, in medieval monarchies the most important sources of revenue were the profits of royal justice, the profits of royal farming, the profits of tolls and mines and mints, the sale of royal patronage. We have already seen that the German monarchy failed to develop judicial institutions, or to improve methods of judicial procedure. The fountain of royal justice, so far from increasing in volume, gradually dried up, and the dukes and margraves, who originally received their ban or judicial commission of the king, have by the middle of the thirteenth century sundered even that slender tie. Hence, although two-thirds of the proceeds of justice originally went to the crown, that particular source of revenue became less and less important. Royal justice was often cowardly, often avaricious, and always unprogressive.

> "Otto dum regnas, non sunt judicia regni,
> Otto dum regnas regnat pecunia tecum,"

sings the poet of Otto III. And the same complaint goes up under Henry IV.:

> "Nummus erit imperator,
> Nummum colunt principes."

And this was the way to kill the golden goose. The royal court in Germany never succeeded in providing a cheap and popular system of justice, which should oust all other competitors from the field; and the revenue from royal justice in Germany was probably never very large, and it had a marked tendency to decrease.

Nothing was so important to a medieval monarchy as a good royal domain. The fortunes of the Capetian House sprang from the able management of a small domain round Paris, and if the early Capetian kings made little mark in history, it is because they attempted to do too much, not because they did too little. Historians have rightly looked back to Lewis VI. as the second founder of the house, for he set himself to clear the domain of feudal castles, and thus laid a solid basis for the extension of his power. So too, in England, the revenues of the royal domain are all-important. Even as late as the time of Henry VII. they stand at £109,400, while the custom dues are only £32,600.

A German writer, who was born under Henry IV., and who died under Frederick I., draws a distinction between the public and the private property of the kings. The public property cannot be alienated except with the counsel of the princes. But private property can be given privately, both by kings and other princes.[1] The distinction between public and private property, between *Reichsgut* and *Hausgut* was one which was not at first clearly recognized, and which only became articulate when the empire passed from one family to another. When Conrad II. succeeded Henry II., who had been Duke of Bavaria, he

[1] Gerhoh, *De Aedificio Dei*, c. 10.

instituted an inquiry at Regensburg as to the possessions and estates in Bavaria which were known to belong to the empire. It has been suggested that Henry IV. may have attempted to carry out a similar revindication of imperial rights in Saxony, and the resistance, which that attempt evoked, may have been partially due to the fact, that lands were claimed as imperial, which were regarded in Saxony as having belonged to the Ottos in their private capacity. But the distinction between private and imperial property is not brought into a clear light until the accession of Lothair. This Saxon sovereign obtained, in 1125, a judgment from the princes at Regensburg that the property which had been acquired by his Salian predecessors through confiscation, or through exchange for imperial lands, belonged to the empire and not to the Salian House.[1] And from this decision affecting the Salian heritage springs the long quarrel between the Welfs and the Wibelins. We may conclude that henceforward the distinction between *Reichsgut* and *Hausgut* is tolerably defined. The imperial revenues would consist in rights over bishoprics, imperial abbeys, imperial lands, in the regalia, that is to say, in a number of royal rights which theoretically could only be exercised by the king or his deputy, the right of safe-conduct, of granting a market, of inheriting in case of intestacy, of coinage, of taxing Jews, of extracting metals. The private revenues of the king were derived from family lands, family monasteries, or from rights

[1] *Ann. S. Disibod.*, 1125, SS. xvii., p. 23, "Rege apud Radisponam in conventu principum inquirente praedia judicio proscriptorum a rege, si juste forifactoribus abjudicata fuerint vel pro his quae regno attinent commutata, utrum cedant ... vel proprietati regis. Judicatum, potius regiminis subjacere ditioni quam regis proprietati"; cf. *Ann. Saxo.*, 1127, SS. vi., p. 765.

originally regal, which had been alienated by kings of a former dynasty in favour of members of his own family, and which had been inherited by the reigning monarch. Now the most important item in this catalogue is the interest which the king possessed in ecclesiastical foundations. Ever since the Germanic invasions there had been few more profitable investments of capital than the building of a church.[1] The proprietor who built a church or a chapel upon his land owned that church or chapel. He could put a slave or villein into the benefice. He could charge burial fees and christening fees and attendance fees. He could force his villeins to attend. He could sell or otherwise alienate the church. He could dismiss the priest or flog him, or make him pay gifts upon his appointment. He could use him as a secretary or a bailiff or farm servant. He could make him wait at table or tend dogs, or lead a lady's horse or watch sheep. When the proprietor died, the proprietary church might be divided up among the coheirs, and the coheirs might not be agreed upon a priest. It was reported to the Council of Mainz in 852 that these dissensions had in some cases proceeded so far, that four rival priests, representing four rival co-partners, simultaneously officiated at the four corners of the same altar.

The process by which these full proprietary rights have been whittled away into the mere right of presentation or patronage, is one of the most striking examples in history of the success which attends persistent and organized ecclesiastical effort. The greater part of the Carolingian ecclesiastical legislation is

[1] For this and the succeeding paragraphs I am indebted to Stutz, *Geschichte des Kirchlichen Beneficialwesens.*

occupied with this problem. The monarchs of the Carolingian House were divided in sympathy, for while on the one hand they were in favour of ecclesiastical and educational reform, on the other hand they were large ecclesiastical proprietors. Substantially the upshot of their legislation was that the pious founder remained the proprietor, but that his proprietary rights were subjected to a number of important limitations. A freeman may sell his church and he may transfer it, but he must not interrupt the daily service or withdraw property once bestowed upon the foundation. The consent of the bishop must be obtained for the building of a church in the first instance. The layman is not to ordain a priest without the license or examination. He may not ordain a slave or receive a fugitive clerk from another diocese, or exact money upon presentation. He may not use his priest as a bailiff or secretary, he may not dismiss him without the bishop's consent, he may not appropriate the tithe. The supervision of the church, of its material fabric, of its lights, of the conduct of its incumbent, is to belong to the bishop. And guarantees are exacted that the church should be adequately endowed and self-supporting, that it should possess one full *mansus* at least exempt from pecuniary and other burdens upon it.

But, in the main, the proprietary rights were left untouched, and of all founders and proprietors of religious houses the king was by far the greatest. In any case it would have been wonderful, if the delicate adjustment of private proprietary rights with universal canonical discipline, which had been envisaged with such singular clearness in the Carolingian Age, should have been continuously preserved, especially in Germany, where there were few great episcopal foundations

coming down from Roman times, and where the foundation and endowment of churches and monasteries was almost entirely the work of individual piety. Still less can we wonder, if in an age, when there was no clear distinction between suzerainty and property, the king regarded himself as entitled, if not to full, at any rate to partial proprietary rights in the churches of Germany. Many of them had owed their wealth to direct royal munificence, most of them had acquired by charter, especially during the period of the Ottos, profitable public rights from the king, and the king expected and claimed a return.

There was a difference observed at any rate, if not clearly stated, between the royal treatment of imperial abbeys and of bishoprics.[1] Even if in the tenth and eleventh centuries the king did not regard himself as the absolute owner of the imperial abbey lands, he treated them with all the freedom of ownership.[2] He sold them, he gave them to bishops, he described them as belonging to his fisc, he exchanged them. The abbey could not transfer an acre of land without royal confirmation. The king used his abbots as bailiffs. The abbots paid yearly tributes, and when the court travelled their way they were burdened with the duty of hospitality. They pay honorary gifts. At times also they pay a special tax, a *precaria* or benevolence. The abbots buy their

[1] For the services rendered by the monasteries in Carolingian times, cf. specially the *Notitia de Servitio Monasteriorum*, 817-18; Boretius, pp. 349-52.

[2] Waitz, *D. V.G.*, vol. vii., pp. 189-227; Wido of Ferrara, ii. 177 [quoted by Waitz, vii., p. 195], says, "Quae vero sunt ab imperatoribus tradita, quia non sunt aecclesiis perpetuo jure manentia nisi succedentium imperatorum et regum fuerint iteratione concessa dicuntur profecto quodammodo regibus et imperatoribus subdita, quia nisi per succedentes imperatores et reges fuerint aecclesiis confirmata revertuntur ad imperialia jura"; Lamprecht, *Deutsches Wirthschaftsleben*, i., p. 682.

places, which are sometimes knocked down to the highest bidder. A hundred pounds of gold will purchase Fulda; just as seven thousand pounds is wanted for the Bishopric of Liège, and a thousand pounds of silver for the Archbishopric of Milan.[1] Thus the profuse donations of imperial lands to ecclesiastical foundations were no mere reckless expenditure of improvident piety. They are to be explained not merely by religious motives, but by political and financial motives as well. The lands remained the king's lands to all intents and purposes. The bishop or abbot paid for his place at open auction, and paid high. If he alienated the lands of his church during his term of office, the alienation was void and revocable, and as a matter of fact such alienations were both often made and often revoked. The abbot or the bishop was likely to be a better manager than the layman, and the better the management the more valuable the patronage. The ecclesiastical foundations too were, during the eleventh and twelfth centuries, the only money-lenders; they alone possessed well-kept barns; they alone were masters of a surplus, and even in the last decade of the thirteenth century, as is shown by an analysis of the debts contracted by a Lothar-

[1] Waitz, *D. V.G.*, viii., pp. 408, 9. Even Lothair, who is the Church's friend, threatens Bishop Otto of Bamberg with the confiscation of his ecclesiastical property, unless he returns to his benefice [Waitz, *D. V.G.*, vii., p. 198]; cf. Ficker, *Eigenthum des Reichs am Reichskirchengut*; Voigt, *Klosterpolitik*, p. 35 ff. For an example of the requisitions which the king was wont to make from a monastery, cf. Lewis II.'s Charter to Herrieden, July 13, 832 [*Acta Kar.*, ii. 175; Waitz, *D. V.G.*, iv. 12. 17]. After exempting the abbot and his house *ab omni publico servitio vel functione*, the privilege goes on to say: "Quando contigerit nobis ... per loca eidem monasterio contigua transire, tunc juxta qualitatem vel possibilitatem rerum suarum, secundum quod ordinatum fuerit aut sigillatum aut cum aliis, tale servitium cum alimoniis dandis inde exhibeant ne monachorum stipendia exhauriantur." Lambert gives a vivid picture of the inroads made on the monastic property during the minority and reign of Henry IV., A.D. 1063, 1066, 1074 [SS. vii., pp. 167, 172, 206].

ingian knight, a man may fall into the clutches of confiding nuns and monks. Yet the Jewish competition had long been formidable in this line of business.[1]

The aim of Hildebrand and his successors was to weaken the proprietary control over the Church, which was exercised not only by the king, but by all ecclesiastical patrons; and although simony continued to flourish in the German court long after Henry IV. was in his grave, and although the proprietary rights of the crown were emphasized by Frederick I., who claimed the *jus spolii*, or the right of annexing the private property of deceased bishops, the Church eventually had its way. It is possibly owing to the revindications of the Hildebrandine party that we find the Hohenstauffen sovereigns piling up ecclesiastical advocacies and ecclesiastical fiefs. No ecclesiastical purist could object to the appointment of lay advocates. The greatest ecclesiastical purist of the Investiture War, Gerhoh of Reichersberg, exclaims against that assumption of criminal jurisdiction on the part of bishops, which it was the very function of the lay advocate to discharge. And no ecclesiastical purist could object to the emperor discharging this function. Yet the office of advocate was generally oppressively exercised. The advocate was criminal judge, and fattened not only upon the judicial fines, but upon the farm-produce of the see. He collected taxes for the support of himself and his men-at-arms. He bullied and terrorized, and the ecclesiastical annals of the Middle Ages are full of his crimes and extortions. When the emperor became advocate, the Church was not more leniently dealt with, for the imperial advocate used his rights to the full. In the course of the twelfth and thirteenth centuries the emperor also

[1] Lamprecht, *Deutsches Wirthschaftsleben*, vol. i., p. 1449.

made a business of acquiring ecclesiastical fiefs, even at some loss of outward dignity, and Constance, Spire, Strassburg, Basle, Augsburg, Regensburg, Wurzburg, Ellwangen, and Fulda, and probably many other ecclesiastical foundations besides, possessed the Hohenstauffen monarchs as their vassals. It was in vain that many churches protested. When a fief was vacant, the emperor would compel infeudation, and many a see was obliged to give investiture to this inconveniently powerful vassal.

It was, however, one thing to amass advocacies and church fiefs, and another thing to build up a concentrated royal domain. The great churches were scattered over Germany, and he who lusted after church fiefs was obliged to put up with a domain of disseminated scraps. Now the history of the royal or imperial domain during this period is impossible to write with any exactitude. The emperors never developed any central exchequer. They showed no financial originality,[1] such as was shown by the bailiffs of the Antonine emperors, who developed the system of the colonate on the imperial estates of Asia Minor, or by the Norman kings of England and of Sicily. They created no financial literature. We have no *Capitulare de Villis*, no *Polyptique* as perfect as that of de St. Germain des Près, no *Doomsday Book*, no *Dialogus de Scaccario*. Perhaps the nearest approach which German history makes to these documents is the *Register of the Lands of Prüm*, made at the command of Henry II., and the *Collection of the Traditiones of Corvei*.[2] It must indeed be admitted

[1] We are talking here of the emperors in Germany. The fiscal system of Frederick II. is excluded.

[2] Waitz, *D. V.G.*, viii., p. 229, n. 1.

that the emperors from time to time took surveys of their property. We know that Conrad II. made an inquiry into the property of the crown in Bavaria, and it is possible that his researches were not restricted to that province.[1] But if these surveys were made, they have perished. There is indeed one brief document summarizing the service owed by the imperial manors in Saxony, Rhenish Franconia, and Bavaria. It was drawn up in the reign of Henry IV., probably between 1064 and 1065.[2] It informs us how many manors there were in each of these three districts, for how many days they were bound to entertain the king and his following, and how much they were expected to provide in the way of cows and pigs, hens and eggs, cheese and geese, beer and pepper, honey and wine. The writer knows nothing of Swabia, and but little of the Italian manors. All he knows of these is, that they provide services such as cannot be enumerated. We gather from this document that most of the imperial property then lay in Saxony. In Saxony there are 20 manors owing 405 days' service; in Franconia there are 21 manors owing 85 days' service; in Bavaria there are 12 manors owing 36 days' service. The average amount of produce demanded for a day's service was far

[1] Meichelbeck, *Hist. Fris.*, i., p. 221; Giesebrecht, *K.Z.*, ii., 286; Waitz, *D.V.G.*, viii. 244, "Placuit omnes Baivariae provinciae comites et electos judices per sacramentum regale admonere, ut possessiones et praedia intra eandem provinciam sita, quae nossent ad solium sui imperii pertinere, eodem sacramento publice interrogati manifeste pronunciarent."

[2] Weiland, i., No. 440. The list may be compared with the *Servitium Diurnum of Corvei* in 1185, which consisted of six fat pigs, one suckling, thirty cheeses, hay, salt, pepper, honey, beer, wine, wood, horseshoes, etc. (Kindlinger, *Munsterische Beiträge*, ii. 329). The Archbishop of Cologne was even more exacting, and required twenty-four large pigs and eight middling ones (Kindlinger, ii. 247), and cf. Von Maurer, *Fronhöfe*, ii., p. 350.

heavier upon the Saxon than upon the Franconian and Bavarian manors.

	Cows.	Pigs.	Hens.	Eggs.	Cheese.
Saxony, -	60	600	1,000	10,000	1,800
Franconia, -	20	160	200	2,000	360
Bavaria, -	15	120	150	1,500	270

	Geese.	Beer.	Pepper.	Honey.	Wine.
Saxony, - - -	200	100	100	200	—
Franconia, - -	40	—	20	40	16
Bavaria, - - -	30	—	15	30	12

We can well understand why the Saxons demanded that the emperor should distribute the burden of his presence more equally, and how it was that the protracted residences of Henry III. at Goslar led to the insurrection under his successor. But we have scarcely any evidence as to the further history of the imperial domains. A few vague remarks in Otto of St. Blaise and Arnold of Lübeck, a few haply surviving charters, throw an uncertain light on the domainial policy of Frederick I. A large class of alienations—alienations to *ministeriales*—are not recorded at all. Men in that class were not deemed worthy of ink.[1]

Where so much is doubtful, we must be careful not to dogmatize. Two things, however, seem fairly clear. One is that Henry III. and Henry IV., finding that the Ottos had considerable lands in Saxony, attempted to extend their domain in that country, and were foiled by the opposition of the Saxon race. Another is that the Hohenstauffen tried to form a royal domain in Swabia, the duchy of which province they had annexed to the

[1] The Bavarian estates of the Reich seem to have been administered by the Bavarian Palsgrave. Cf. Dipl., 1140 [*M.B.*, xiii. 70], "Per manum ipsius Ottonis palatini comitis, qui tunc temporis advocatiam gerebat super bonis regni."

crown, and that with this object in view Frederick I. collected as many ecclesiastical advocacies and fiefs in South Germany as he could, and also entered into the inheritance of a number of deceased Swabian nobles, whose names are given in the chronicle of Otto of St. Blaise. We know too that he covered the Swabian hills with numerous castles, filling them with men-at-arms to keep the country in check, and that he appointed Degenhard of Hellenstein, a *ministerialis*, to be "procurator through all the royal estates of Swabia." What with the county of Burgundy and the East Frankish duchy and the Palatinate of the Rhine, and the land of Pleissen in the north-east border, Frederick was rich enough in Germany. Henry VI. too managed to recall the Margraviate of Meissen to the empire, so that there were two *nuclei* as it were of imperial property, one in the extreme north-east and the other in the extreme south-west, and then there were also many scattered advocacies and church fiefs. But after the death of Henry VI. this imperial domain, which had been so laboriously put together, rapidly dissolved. Philip of Swabia had to buy his way to the throne with hard cash. His donations were numerous, but still his little daughter was left an heiress. Otto IV. too had to invest freely in the formation of a political party, and was as profligate as his rival and predecessor. Under Frederick II., who cared chiefly for Italy, imperial property was freely sold and imperial rights freely given away.[1] The reign of Conrad IV., who governed Germany

[1] Some acquisitions were made by Frederick II., who possessed the advocacy of sixty-five convents in Swabia [Frey, *Die Schicksale des Königlichen Gutes in Deutschland*], but it is significant that in the case of Uri, purchased 26th June, 1231, from Count Rudolf of Hapsburg, a formal promise is given to the inhabitants that they shall not be leased away or mortgaged [*Urk. d. Zurich*, i. 345, quoted by Winkelmann,

for his father from 1237 to 1253, witnessed the final pillage of the imperial domain. At the end of the Hohenstauffen period the imperial domain is thus described:[1] "In surface it was about equal to three-fourths of the march of Brandenburg. It lay strewed in the district round the confluence of the Main and the Rhine, between the Neckar and the Danube and the Danube and the Lech. To this we must add the Landgraviate of Lower Alsace, parts of the Upper Palatinate and the Saxon Vogtland with the Burgraviate of Altenburg. Pitiable remnants of the old property, and these too in the motherland! In the colonial lands there was as good as no imperial property at all. And yet it was just here that with a resolute effort a new territorial foundation of the imperial power was still possible, as the results of later time show."

It was true that those lands on the eastern border, which were waiting to be wrested from the Wend, the Czeck, and the Magyar, lay at the free disposal of the monarchy. Otto I. gives away whole Slavonic regions, with towns and villages upon them. The Sees of Merseburg, Magdeburg, and Nuremberg were enriched by the emperors with these conquered territories, which were held to belong to no one but the sovereign, upon the same principle upon which the sovereign was ruled to be lord of all wastes and deserts.

Friedrich II., vol. ii., p. 253.] So too, in 1215, Frederick II. promises the men of Aix "quod nunquam de manu regis vel imperatoris alicui persone nobili vel ignobili in beneficio tradentur" [Lac., *Urkb.*, ii., 26, No. 51]. Towards the end of the thirteenth century almost all the imperial land in the Landvogtei of Rothenburg seems to have been mortgaged to the Bishop of Wurzburg and Count Albert of Hohenlohe. For the whole subject of imperial mortgages, cf. Küster, *Reichsgut zwischen* 1273 *and* 1313, and Werminghoff, *Die Verpfändungen der mittel- und niederrheinischen Reichstädte* [Gierke, *Untersuchungen*, vol. xlv.].

[1] Lamprecht, *Deutsche Geschichte*, vol. iv., 13, 14.

Henry III., sweeping the Hungarian boundary back to the Leitha, is lavish with his donations. Frederick II., little dreaming of the future, grants away all lands to be conquered in Livonia, Curland, and Prussia.[1] And so the monarchy squanders its golden chances one after another. Yet it is calculated that at the end of the Carolingian period there were 83 crown estates in Franconia, 50 in Alamannia, 21 in Bavaria, 12 in Thuringia, 5 in Saxony, and 5 in South Frisia. Three hundred and seventy-five square miles of imperial property, managed upon the careful and concentrated system of the *Capitulare de Villis!*[2]

"Every treasure," says the *Sachsenspiegel*, "which is buried under the earth deeper than the plough goes, belongs to the royal power." All metals which require to be extracted from the soil, all salt springs and salt pans belong to the king, and since the rights of mining and of acquiring salt could only be obtained lawfully by royal grant, it is reasonable to suppose that the kings acquired from time to time large sums for mining concessions. The mines of the Harz, which yielded silver and copper and lead, belonged to the royal domain, and it is possible that the kings derived a royalty from the gold mines of Salzburg, the silver and iron of the Tyrol, and the mines of Silesia and of Styria. But with the exception of the ore in the Harz Mountains, the mineral wealth of the empire lay upon the extreme borders and for the most part in mountainous inaccessible regions; and it seems that much was not obtained from these sources until the thirteenth century, when the empire

[1] Waitz, *D.V.G.*, vii., pp. 255, 256; *H.B.*, ii., pp. 423, 865; Schröder, p. 518.

[2] Inama-Sternegg, *Grundherrschaft*, p. 26; Lamprecht, *Deutsches Wirthschaftsleben*, i., p. 781, n. 1.

in Germany had become too weak to enforce its rights, and indeed had lavishly conceded them to the princes.[1]

The forests, which were in England so great a source of revenue, are in Germany of very little financial importance. The royal forests of the Carolingian Age were jealously consecrated to the interests of sport, but they were diminished by the generosity of the kings, and there is little subsequent evidence of afforestation. In the twelfth and thirteenth centuries every lord seems to have been in possession of forest rights over his own property,[2] and the successors of Otto I. appear to have needed the consent of the proprietors of a district before proclaiming it under forest law.[3] Meanwhile the area of the royal forests was steadily diminishing. "There are three heaths within the land of Saxony," says the author of the *Sachsenspiegel*, "where peace is worked for wild beasts under the king's ban, save for bears and wolves and foxes. These are called ban forests. The one is the heath at Coyne, the other the Harz, the other the Maidenheath. He who hunts within the wood shall pay the king's ban, that is sixty shillings. If a man rides through the ban forest, his bow and his crossbow shall be unstrung, his quiver shall be closed, his tufters and hounds shall be leashed, and his hounds coupled. If a man hunt a beast outside the forest, and his hounds follow it into the forest, the man may follow, so he do not blow his horn or

[1] Frederick I.'s Charter to Trent, 1189. Frederick II.'s concession to the Wittelsbach princes, 1219. Grant of the Goslar royalties to the Duke of Brunswick-Luneburg, 1219. Hüllmann, *Deutsche Finanzgeschichte*, pp. 61-3.

[2] The latest forest privileges granted by emperors to individuals are two documents of 1108 and 1132, both of doubtful authenticity (Schröder, p. 521, n. 94); cf. Lamprecht, *Deutsches Wirthschaftsleben*, i., p. 110, n. 3.

[3] Schröder, p. 521.

call on his hounds, and he does no misdeed even if he take the beast. He must call back his hounds."[1] If we add to these three Saxon heaths ten other royal forests it is as much as the evidence will warrant, and it is significant that there is no quarter in which free hunting survived so long as in these imperial sanctuaries.[2] So Germany was spared the cruelty of the English royal forest law. There were, indeed, seigneurial forests, and some of the seigneurial forest customs were, as we know from later sources, cruel and severe. But the forest is not one of the national grievances in the Middle Ages.[3] Wholesale afforestation ceases with the end of the tenth century, and does not recur until the eve of the Reformation. Between these dates the plough steadily encroaches upon the sanctuary of the beast. The backwoodsman who made a clearing in the jungle, the Fleming who drained the fen, the burgher who tended the Almend, the peasant who planted the vine or turned the soil with his plough—that vast army of unknown labourers, who during this age converted Germany from a wilderness into a land of thriving villages and abundant culture, was partially freed from the paralyzing competition of aristocratic sport.[4] The Saxon land law, which comes to us in a peasant speech out of peasant minds, prizes agriculture

[1] *Ssp.*, ii. 61.

[2] Burgermeister, *Codex Dipl. Equestris*, i., pp. 475-502.

[3] Grimm, *Weisthümer*, i., 160. 565 ; iii. 180. 321. A medieval popular song against forest oppression is quoted by Bernhardt *Geschichte des Waldeigenthums*, i., p. 96.

[4] For the cessation of afforestation, cf. Lamprecht, *Deutsches Wirthschaftsleben*, iii., p. 111 ff. In 1222 Caesarius of Prüm writes, "In tempore tam diutino [since 893] constat multas silvas esse extirpatas, villas edificatas, decimas auctas, multa molendina sunt in praefato tempore edificata ac multe vinee plantate, terre infinite culte." For instances in which sport *did* impede agriculture, cf. Grimm, *Weisthümer*, iv. 743, 756.

before the chase. No man must tread down the sowing through hunting from the time that the corn is in blade.[1] The custumals of the fourteenth and fifteenth centuries betray abundant signs of the communal enjoyment of forest rights. The tenants of the Abbot of Prüm are allowed to hunt all beasts but those which have the cloven foot. The poor man who has "fire and flame in the Hundsruck may use water and meadow for his needs and hunt the hare and catch fish, so long as he bring his booty home and consume it with his children. In the Black Forest at Dornstetten the inhabitant may hunt birds and squirrels, boars, bears, foxes and wolves, but no red game without leave of the lord's agent.[2] In the Tyrol, in Alsace, in many parts of Swabia free communal hunting lasts right through the Middle Ages, and the encroachments of the Lords upon the forest rights of the commune were among the grievances in the peasant revolt of the fifteenth century. The growth of the principalities brought many hardships in its wake, and the greedy sportsmen of the Reformation period, not least the bigamous hero of young Protestantism, Philip of Hesse, sharpened the cruel axe of forest monopoly. But the controlling influence over German forestry came like so many other things from France. The forest codes of the eighteenth century are dominated by that great monument of skilful egoism, the forest ordinance of Lewis XIX. issued in 1669.[3] But mean-

[1] *Ssp.*, ii. 61. 5; *Dsp.*, 178.

[2] Grimm, *Weisthümer*, ii., 546. 143; i., 384. 7.

[3] Hüllmann, *Deutsche Finanzgeschichte*, pp. 61-3; *Geschichte des Ursprungs der Regalien*, pp. 22-32; Bernhardt, *Geschichte des Waldeigenthums*; Jannsen, *Geschichte des deutschen Volkes*; G. Mayr, *Ueber Forstverwaltungsgrundsätze* [*Jahrbücher für Nationalökonomie und Statistik*, ii., pp. 433-54]; Von Maurer, *Geschichte der Fronhöfe*, iii., 45, 6; *Geschichte der Markverfassung*, pp. 153-160.

while through the whole course of the Middle Ages the primary function of the forest was to subserve the needs of the commune or the town. The gain was great, but in revenge the monarchy, by losing control of all but a few forests, surrendered more than a revenue. It surrendered the initiative and the prize of agricultural exploitation to the nobility.

The history of the right of coinage affords another illustration of that policy of drift which was fatal to German finance. Charles the Great attempted to restrict the right of mintage to imperial courts and palaces, but under his successors the right is granted away with a free hand. Lewis the Pious grants the right to Corvei, Lewis the German to Worms and Strassburg, Lothair II. to Prüm, Arnulf to Hamburg, Lewis the Child to Eichstadt and Osnabrück, Zwentibold to Munstereifel. Under the Ottos and their successors grants are still more numerous. One author counts forty-two concessions from the tenth to the twelfth century, and this estimate is insufficient. The grant of mint-right became the almost inevitable accompaniment of the grant of market-right. From the tenth century onward we get the names of dukes and bishops appearing on their coins. We have the coins of monasteries, as Fulda, Corvei, Quedlinburg; the coins of counts, as the Counts of Hennegau, Namur, Toul, Flanders, Friesland; the coins of bishops, as Augsburg, Cologne, Regensburg, Bamberg; and from the thirteenth century onward the coins of towns. Sometimes the royal name appears upon these coins, but oftener not. The Duke of Swabia alone of the German dukes pays this tribute to the monarchy. Nor is there any fixed measure of purity or weight. The king, in granting the right of coinage, will stipu-

late that the new mint shall conform to the weight and purity of some well-known established mint, such as Spire or Worms, Metz or Bamberg. By degrees Cologne, the most important trading town on the Rhine, imposes her currency over a wide district. At the end of the twelfth century the Cologne mark [two-thirds of the English pound] is current in Westphalia, Saxony, Frisia, and the Netherlands. It is found frequently in Sweden, and Frederick I. pays it the compliment of regulating the coinage of Aix by its standard. What Cologne was in the north-west, that Regensburg was in the south-east, where the dukes of Bavaria had managed to preserve the Carolingian heavy denarius right up to the end of the tenth century. Just as Cologne was the most important town on the Rhine, so Regensburg was the most important town on the Danube. Its coinage spread through Bavaria and Poland, Masovia and Austria, Carinthia and Tyrol.

The ideal of Charles the Great was perhaps impracticable. In half barbarous times men are more anxious to secure a medium of exchange than an exact measure of value. Travelling is difficult and perilous, distances are long and wearisome. The multiplication of mints may have been an economic necessity, and the debasement of coinage a lesser evil than its scarcity. We must remember too that in the twelfth century most public taxes were paid in money, and that it was the interest of the crown that money should be plentiful. But it is significant of German history that the standard of the coinage was not maintained by the requirements of the royal treasury, but by the good sense of the merchant communities in the two greatest German trading towns. Before the purity and might

of the Cologne mark, even a Roman emperor must bow down. "We promise," says Henry VI. in 1190, "that we will in future have no mints in the diocese of Cologne save two, at Duisburg and at Dordrecht, and we will not permit these in future except according to the ancient custom, prohibiting also that any money shall be struck, both within the archbishopric of Cologne and outside the same archbishopric, according to the value and form and image of Cologne money. But if we shall cause money to be struck outside the diocese of the archbishopric of Cologne, which in purity and weight equal the Cologne money, and the Archbishop of Cologne inhibit it, we firmly enjoin that it shall not be received in his cities and towns."[1] This is indeed a capitulation. In 1220 and 1231 Frederick II. went on to promise that no new mints should be set up in the territories of princes, lay and ecclesiastical, without their consent. The emperor could coin on his imperial lands, in his imperial cities. He was confined to a domain which was rapidly dwindling in size and importance. But he was still in possession of one great advantage. His coins could not be excluded from use in the territory of any lord, unless an express privilege had been granted to that effect. The "Mint-ban" did not avail against the sovereign. But the opportunity was not improved, and the towns were left to their own devices.

As the German kings of this period failed to maintain a uniform metallic standard, so too they failed to maintain a uniform standard of weight and of measurement.[2] Yet in earlier times a vigorous effort had

[1] Lacomblet, *Urkb.*, i., 524.

[2] The main authorities are Schmoller, *Forsch.*, xiii., 2; Kuntzel, *Mass und Gewichtswesen in Deutschland*; Lamprecht, *Deutsches Wirthschaftsleben im Mittelalter*; Inama-Sternegg, *Deutsche Wirthschaftsgeschichte.*

been made to procure this result. In the middle of the sixth century there is legislation on the point from Chilperic[1] and Justinian.[2] Charles the Great introduces a new system of weights and measures, issues frequent ordinances concerning them, and clearly intends that these ordinances should apply throughout the whole empire.[3] Nor was this an isolated effort. Lewis the Pious in his *Epistolae ad Archiepiscopos* [816-17],[4] Lewis II. in his instructions directed to the Missi in Italy [856],[5] Lewis the German in a privilege to Worms [856],[6] Arnulf in a privilege given to the same city [898],[7] show their desire to uphold the Carolingian tradition, and to maintain the *modius regis*. It must be acknowledged that the aspiration was greater than the achievement. As early as 829 we hear complaints of unjust measures and of diversities of weight and measure in the different provinces of the empire. The *Francorum regnum* was too large for adequate supervision, and the later Carolings too weak to supervise. Still, so long as the Caroling dynasty lasted there was a show of preserving the royal standard. But if we turn to the period covered by this essay to search for legislation about weights and measures, there is absolutely not a scrap to reward our inquiry. The public obligation or right of setting and maintaining a standard was generally bound up with the jurisdiction of the count,[8] and it went the way of the *Comitatus*. It became annexed to the bundle of rights preserved by this or that noble, or this or that town. In the town law of Freiburg [1120]

[1] *LL.* ii., p. 11.
[2] *LL.* v., p. 174.
[3] Boretius, *Kap.*, i. 60, 74, 115, 146.
[4] Boretius, *Kap.*, i. 342.
[5] *LL.* i. 138.
[6] Mühlbacher, *Reg.*, 1373.
[7] Mühlbacher, *Reg.*, 1894.
[8] Waitz, *D. V.G.*, vii. 421.

it is ordered that "every measure of wine or corn, and every weight of gold or silver shall be in the power of the consuls."[1] In the town law of Strassburg "every burgess shall be allowed to have his own pound weights in his house, so long as they be formed by the minter."[2] In the county, jurisdiction over false weights and measures and coinage had slipped from the count into the hands of humbler men. In the *Sachsenspiegel* it is exercised by the Bauermeister or head man of the village.[3] The long list of weights and measures given by Lamprecht[4] shows that the most unimportant village may keep its own standard. Variety is great in the coinage, but in weights and measures, which require no capital or technical skill, variety is greater still. Still, through the confusion of multiple standards, the *modius regis* of the great Charles is sometimes referred to. When the abbess of Frauenmunster brings an action in 1282 against a certain Chuono for dues in kind, the judgment is, that they shall be paid according to the measure of a certain stone which is said to be deposited in the monastery, which King Lewis the Pious caused to be hallowed.[5] Everything goes back to the Carolings, for even if the care for weights and measures is sometimes included in lists of regalia,[6] the regalia have long ceased to be the exclusive property of the kings. The only provision issued by an emperor during this period which can in any sense be called an industrial *pronunciamento* is

[1] Quoted by Inama-Sternegg, ii. 389 ff.

[2] *Ibid.*, ii. 389 ff.

[3] Homeyer, *Ssp.*, i. 241.

[4] *Deutsche Wirthschaftgeschichte*, ii. 489-90. Lamprecht shows eight places in the Moselle region whose measures coexisted side by side. Then the Trèves measure gradually conquered (*ib.*, ii. 492).

[5] Wyf's *Gesammelte Abhandlungen*, p. 385.

[6] Instances in Schmoller, *Forsch.*, xiii. 2, p. 57.

the so-called *Constitutio de Pace tenenda* issued by Frederick I. at the diet of Regensburg, the eleventh clause of which enjoins that every count shall fix the price of corn, and that anyone who in the next year shall sell a bushel above the price so fixed should be held to have violated the peace and should be fined thirty pounds to the count for every bushel so sold.[1] If we wish for general ordinances upon the subject, we must go not to the emperors but to the princes, to the Landpeace for Bavaria in 1244, and to the Landpeace of Duke Henry and the bishops of Passau, Bamberg, and Freising in 1255.[2]

The largest item in the modern budget is formed by indirect taxation, by import duties and export duties and excise duties. The Medieval Empire was not, however, a fiscal unit. The *terrae imperatoris* were never girt round with a cordon of custom-stations, and in this period there was nothing like an imperial, a German, or even a tribal Zoll-Verein.[3] How could a national spirit arise in an Empire which consisted of so many racial elements, and which was destitute of a natural frontier towards the East and the West? If there had been a war with France, French-speaking men might have become foreign, and a law of aliens might have developed, as it was developed in England, out of the

[1] Weiland, i., No. 140, and Soetbeer, *F.D.G.*, vi. 72.

[2] Printed *Quellen und Erörterungen zur bairischen und deutschen Geschichte*, v. 89, and Weiland, ii., Nos. 427, 438. There are a certain number of decisions affecting industry and finance which are given by the princes in the royal court, *e.g.* under Conrad III. [*Acta*, 91], "In praesentia nostri adjudicatum est quod theloneum a nullo exigi debet, nisi a mercatoribus qui causa negotiandi vadunt et redeunt."

[3] Waitz, *D. V.G.*, viii. p. 293. The most important toll-stations under Henry IV. were the royal courts—Boppard, Hamerstein, Dortmund, Goslar, Engern, Nuremberg, most of them well inside the Reich (*ib.*, p. 303). There were no differential duties in favour of the Reich. Cf. *Urbarium Baiuwariae inferioris*, *M.B.*, xxvi. 526.

fighting between the English and the French.[1] But France and Germany were separated by the large neutral districts of Lotharingia and of the kingdom of Arles, districts over which "it was useless to fight and far safer to shake hands."[2] It was indeed stated in the German law-books that all princes of the empire must be feudatories of the German king alone, but an exception was made in favour of foreign sovereigns.[3] In 1172 Baldwin of Hainault receives a pecuniary fief [*Kammerlehen*] from Henry II. of England. King Richard, on his release from captivity in 1194, grants annual money fiefs to the Archbishop of Cologne, the Archbishop-elect of Liège, the Duke of Limburg, and at the beginning of the thirteenth century most of the magnates of the Netherlands were English vassals. France, Denmark, Bohemia, all had their lists of German feudatories before the fall of the Hohenstauffen,[4] for feudalism knew no nationality, nor was there any conception of a common citizenship for the Holy Roman Empire. It is true that in the twelfth century the emperor objects to French subjects holding German fiefs,[5] and that if a French count acquires a German allod, the emperor attempts to make him hold it as an imperial fief. But the foreigner [*Fremde*] of the thirteenth century law-books is not the Frenchman or the Scandinavian or the Russian—not even the Bohemian or the Dane or the Italian. He is merely the "foreigner" of old Ger-

[1] *H.E.L.*, vol. i., p. 441-450.

[2] Stubbs, *Hoveden*, [Roll Series], vol. ii., Intr., lxxxi.

[3] Cf. *Gislebert of Hennegau*, 1190 [Duchasteler], p. 211, "Quicunque enim in imperio principis gaudet privilegio nemini hominium facere potest qui consecratus non fuerit," quoted by Ficker, *Von Heerschilde*, p. 72.

[4] Ficker, *Von Heerschilde*, pp. 75-119.

[5] In 1187 Frederick I. refuses the Count of Champagne the heritage of Namur.

manic law, the man who has a different Hantgemal or legal home, who has not been domiciled to the folk-right of the region into which he has wandered.[1] The Swabian is a foreigner in Saxony, the Westphalian is a foreigner in Eastphalia, the Regensburger is a foreigner in Vienna, the Mainzer is a foreigner in Cologne. When the legal writers talk of the different sorts and conditions of men, we are barely conscious of any felt contrast between the citizen of the empire and the outsider, or between the German and the non-German. Feudal law knows the contrast between those who owe Reichsdienst and those who do not. Land law knows the contrast between the man who is perfect in his right and the man who is under the Acht or the ban. Probably Eike von Repgow, had he been pressed, would have asserted that the whole world, in a way, belonged to the Roman emperor, for there was much vague talk to that effect both among emperors and clerks. But he recognizes also the Roman Empire in its narrower sense, though he has nothing to say as to the disabilities of the persons who lived beyond its borders. It is not even stated that the king need be a German. He must be free and lawfully born, and devoid of obvious physical defects, and not under the Pope's ban, and must live Frankish law; and this is all, for in the time of the law-books the princes were actually beginning to import foreigners to fill the throne.[2] It never occurs to the writers to say that the judge or his messenger are to be Germans. It is sufficient if they be sound in limb and creed, of proper age and "perfect in right."[3] When the law-books speak of foreigners [*Fremde*] or of "incoming men," the writers are either

[1] *Dsp.*, 239; *Ssp.*, iii. 26.

[2] *Dsp.*, 296. 7; *Ssp.*, iii. 54. 3, 4.

[3] *Dsp.*, 77; *Swsp.*, 71; *Dsp.*, 106; *Swsp.*, 96.

thinking of Franconians, Swabians and Bavarians,[1] or else of persons who "come and fare guestwise and have no property in the land," and whose weregild is assessed at ten pounds.[2] When they speak of tolls they know of no unfavourable treatment of the alien. Priests, knights, and their following go toll-free. Every man is toll-free if he make no use of ship or bridge; and the robbery of priests, pilgrims, and merchants on the high road is a specially heinous offence, to be punished with hanging.[3] Even the Wend is adopted into the legal system. He who has the king's ban finds judgment over all men, German and Wend, free or subject. If there be no ban, then every man may find a judgment over every other, who is not rightless, save that a Wend may not find judgment over a Saxon, or a Saxon over a Wend, unless the offender be caught in the offence.[4] The real alien of German law is not the well-to-do foreigner, but the lordless and landless man, who after a year and a day may be taken into slavery as a wild thing.[5] The *Wild-fangrecht* of German law is not the outcome of national feeling, but of police precaution. The sentiment which underlay an institution apparently so savage and barbarous was identical with the sentiment which inspired the Anglo-Saxon legislation against lordless men and fashioned the system of frankpledge.[6]

Yet the tolls might well have been made an important source of imperial revenue. The development of

[1] *Ssp.*, i. 30. [2] *Dsp.*, 283; *Ssp.*, iii. 45.

[3] *Dsp.*, 42, 134; *Ssp.*, ii., 27. 2; *Swsp.*, 39.

[4] *Dsp.*, 328, 329; *Ssp.*, iii. 69. 2, 70. 1, 2.

[5] Grimm, *R.A.*, p. 399. The formula was, "Ich nehme euch im namen unser gnadigen herschaft zum wildfang, und begehre von euch den fahegulden."

[6] For the development of imperial sentiment, cf. Gierke, *Genossenschaftsrecht*, ii., 572. In 1278 the Salzburg annalist speaks of "Nostra clara Germania ... natio ... principes nationis" (SS. ix. 803).

Eastern commerce stimulated by the Crusades poured an ever-increasing volume of trade over the Alpine passes into the valleys of the Danube and the Rhine, and by the middle of the thirteenth century the foundation of the Hanseatic League was laid in the union of Lübeck and Hamburg. The wealth of the Rhenish bishops largely flowed from the market and river tolls, which they were empowered to collect in the great trading cities on the Rhine;[1] the wealth of the Archbishop of Magdeburg from the three toll-stations on the Elbe given to it by Lothair. So far as men thought at all of this fountain of opulence, they thought of it as deriving from the emperor, and as controlled by him. The emperor was the suzerain of rivers,[2] the protector of merchants and wayfarers. His presence in the market-place was symbolized by the figure of Roland, the legendary companion of Charles the Great. The pack-man journeying to market was travelling into the emperor's presence, and protected by the emperor's peace.[3] Market-right and toll-right and mint-right were regalia, and they are so regarded even at the end of the thirteenth century.[4] In 1122 Lothair listens to complaints against the tolls of Utrecht, and restores the ancient tariff. In 1136 he lowers the toll on the Elbe. In 1155 there is an outcry from the merchants who ply their trade upon the Main against "the new and unaccustomed and unreasonable tolls" which were

[1] Cf. the Toll-roll of Coblentz, which belonged to the Archbishop of Trèves [11th century] (Waitz, *D. V. G.*, viii., pp. 295, 296).

[2] Waitz, *D. V. G.*, viii. 302, n. 3.

[3] Frederick I.'s *Lex pacis Castrensis*, sect. 85 ; Weiland, i., No. 173.

[4] *Swsp.*, 304, 2, "Wir sprechen das alle zolle und alle münzen die in dem Romischen riche sint die sint eines romischen Koniges, und swer si wil haben, der si pfaffen fürste oder leien fürste der muz si haben von dem romischen Künige." Cf. also *Dsp.*, 310 ; *Ssp.*, iii. 60, 2.

exacted between Bamberg and Mainz. The emperor was not the only person interested in checking the free usurpation of toll-rights. The collections of charters tell a tale of tolls granted to bishops, to monasteries, to counts,[1] with a liberality which seems almost profligate. Market-rights were accorded freely to towns, and, except during the period of a Reichstag, market dues went to the town and not to the emperor.[2] Indeed, it is probable that during the whole of this period but an insignificant fraction of the tolls levied throughout the empire found its way into the emperor's treasure box. By the twelfth century the princes were probably all of them in possession of these rights, and anxious to safeguard their vested interests. At a Reichstag at Worms [Apr. 6, 1157] all the tolls on the Main save three were abolished, and a verdict of the court subsequently declared that no new tolls should be created save with the consent of the empire.[3] But the emperor was no longer even theoretically the sole arbiter and authority on this question. The princes, whose material interests are so vitally affected, demand and obtain a concurrent voice. The "sentence of the princes" lowers the tolls at Duisburg,[4] deprives the Count of Cleves of the toll at Nimwegen granted to an ancestor by Henry III. "without the knowledge and consent of the princes of the empire," and transfers it to the Count of Guelders.[5] In 1157, in 1209, in 1235, in 1290, the princes declare

[1] For a collection of instances, cf. Wetzel, *Das Zollrecht der deutschen Könige*, pp. 17, 18.

[2] Schroder, p. 214.

[3] Weiland, i., No. 162. Of the three toll-stations on the Main preserved by this decree, one only [Frankfort] was imperial. The Neustadt tolls belonged probably to the Bishop of Würzburg, those of Aschaffenberg to the Archbishop of Mainz (Wetzel, p. 27).

[4] 28th Dec., 1165. Stumpf., 4058. [5] May, 1182. Stumpf., 4345.

that their consent must be obtained to the imposition of any new toll. So it is that to safeguard their own large pecuniary interests the princes combine with the emperor against the trifling bandit who pillages on the tow-path. One step further and they combine with one another to pillage the emperor himself. According to the old custom, whenever the emperor came into a town within the empire he enjoyed the toll for the period of his stay.[1] Frederick I. appears to have been persuaded to restrict this prerogative to the eight days previous and the eight days subsequent to the holding of an imperial court, and the arrangement was confirmed by Frederick II.[2] Then during the troubled period succeeding the death of Henry VI. comes capitulation after capitulation. Now it is the Archbishop of Magdeburg who forces Otto IV. and Frederick II. to promise that they will raise no exaction from the property of the see without the consent of the archbishop and his successors.[3] Now it is the town of Nuremberg which compels Frederick II. to promise that no citizen of Nuremberg shall pay toll upon any of his property during the celebration of a royal court.[4] If an individual prince or town can obtain these terms, still more advantageously can the whole body of princes hector and bargain.

In 1220 the imperial court forces Frederick II. to withdraw the Rhenish tolls which he granted to the Count of Guelders, on the ground that the donation damaged existing interests.[5] In the same year the

[1] *Ssp.*, 60, sect. 2.

[2] Wetzel, *Das Zollrecht der deutschen Könige*, pp. 46, 47.

[3] July, 1208. Böhmer-Ficker, 239; Riedel, *Cod. Dip. Brand.*, i., 17, 436. May, 1216. Böhmer-Ficker, 858; *H.B.*, i. 459.

[4] Nov. 8, 1219. Böhmer-Ficker, 1069; *H.B.*, i. 700.

[5] Franklin, *Sententiae Curiae Regiae*, No. 179; Weiland, ii., Nos. 74-5.

emperor promises the ecclesiastical princes that no new tolls shall be raised in their territories without the consent of the empire.[1] He promises further that he will maintain all tolls then enjoyed by the princes, and will not suffer them to be impaired or diminished; and finally, in 1234, it is settled that all tolls erected without the consent of the princes since the time of Frederick I. shall be abolished.[2] In this way the emperor was deprived of his right to create new toll-stations, or to increase the tolls in those already existing.

But meanwhile the merchants, whose ships ply the great waterway of the Rhine, that "royal street," as Barbarossa once proudly called it, have been abandoned to the pillage of the nobility. It is true that Henry VI. recovers the royal toll-station at Boppard, that Duisburg and Oppenheim and Nimwegen are in royal hands in the twelfth century, that Frederick I. builds a famous castle at Kaiserwerth, which was destined in the fourteenth and fifteenth centuries to become the most opulent toll-station on the Rhine. But in these efforts to recapture the Rhenish duties the emperors of the twelfth century are met by powerful and zealous competitors. Cologne regarded Kaiserwerth, as Venice regarded Zara, as Antwerp regarded London; and if the inner motives of Barbarossa's reign could be fully revealed, we should probably find Kaiserwerth to be the clue to the great feud which divorced Cologne from the Hohenstauffen, and threw the greatest commercial town in Germany on to the side of the Welfs. But, however this may be, the Rhine of the thirteenth century is no longer the "royal street" of Barbarossa's boast. The emperors, always in need of ready money,

[1] Weiland, ii., No. 73. [2] Franklin, No. 185.

mortgage or alienate their few toll-stations; the men of Cologne exact from Otto IV. the destruction of the castle at Kaiserwerth; the robber fastnesses multiply apace. An English writer, describing the German voyage of Richard of Cornwall in 1260, uses all his gloomiest pigments. We learn of the "furious insanity of the Teutons," of their "inexpugnable fortresses," of the "intolerable tolls" which they levy upon all kinds of food and merchandise "coerced neither by fear of God nor by reverence of the king."[1] The steady multiplication of toll-stations is in itself a sufficient indication of the growing anarchy, but though the smaller nobles joined in the pleasant task of the relieving the merchant of his wealth, the lion's share went to the princes of the Church. The rich banquet of the Rhenish tolls was served up to the opulent Archbishops of Mainz and Cologne. The counts of Cleves and of Guelders sat, so to speak, below the salt, and a crowd of ill-mannerly and famished nobles scuffled for the dishes on their way to the dining-room.[2]

There was, however, one source of wealth, the most prolific and promising of all, which was but sparingly tapped by the emperors of this period. We refer to the direct taxation of the towns. The conception of regular direct taxation was in itself unfamiliar and abhorrent to the German mind. The words which are used to denote the first direct taxes, *Bede*, which is equivalent to the modern German *Bitte*, a request, and *precaria*, indicate at once the exceptional and the voluntary character of the offering. The *Bede* which bishops and abbots, advocates and nobles levied from their dependents were but the benevolence

[1] Thomas Wikes. Böhmer, *Fontes*, ii. 455.

[2] Sommerlad, *Die Rheinzölle im Mittelalter*.

made perpetual and stereotyped, and long after these gifts had become regular a flavour of voluntaryism still attached to them. The very odiousness of the tax preserved the recollection of its origin. The king too levied *Bede* or benevolences from the towns. They came to him directly from the towns which stood upon his domain, or from those over which he had acquired rights of advocacy, and they came to him indirectly where a prince, lay or ecclesiastical, was obliged to levy a tax upon his burghers in order to defray the expense of his suit to the imperial court, or of his service in the imperial army. As the great towns of the Rhine, and indeed most of the important towns in Germany, had at a very early period fallen under the political control of the bishops, the emperor's interests were in reality far more concerned with the contributions given to him indirectly through the princes, than with the taxes which he was able directly to collect from his own towns, or in virtue of his own advocacies. The consequences of this state of things were far-reaching. So long as the bishops furnished their due quotas to the imperial host, so long as the towns of the bishops defrayed the expenses of an imperial visit, the emperor was content. The odium, the trouble, the expense of tax-gathering was shifted on to other shoulders, and to others also fell the opportunity of an education in practical finance. In all the greatest cities in Germany the state never once came face to face with the individual tax-payer.

The process by which these town taxes were elaborated is certainly obscure, and was almost certainly gradual. It is probable that they were first levied by the bishops upon their own dependents, and that,

as the bishops' control of their towns became more and more extended, the *Bede* lost their semi-private character and became a public charge upon the whole municipality, except in so far as any part of it was specially exempted by charter. The kings then began to exact similar benevolences from the towns upon their domain, first of all upon extraordinary occasions, and afterwards annually. As the royal domain increased under Frederick I., these town taxes became more important.[1] They were one of the sources, perhaps they were the most important source, from which the emperor paid the *ministeriales* who managed his estates and filled his armies. But here again the financial unity of the town was broken into by special immunities and concessions.[2] The town, whether episcopal or royal, resented these immunities, which, by diminishing the numbers, augmented the burden of the tax-paying group. They resented also the interference of the royal agents in their internal economy, and the uncertainty which seems to have prevailed, both as to the amount and the occasion of their subsidy. We find that the emperors of the thirteenth century not infrequently grant charters in satisfaction of these demands. The town shall collect its own tax. The amount of the tax shall be fixed. The emperor shall not levy a tax upon individuals, but the citizens shall contribute to a common fund according to their

[1] In the Hohenstauffen period most of the imperial towns are in the south of Germany. Aix la Chapelle, Dortmund, Goslar, Nordhausen, Lübeck are exceptions (Blondel, p. 297). Frankfort, Hagenau, Nordlingen, Nuremberg were the most important Reichstädte in the south.

[2] Weiland, i., No. 283; *Sententia de Immunitate Clericorum a collectis Civitatis*, May 31, 1182, "Nos itaque omnes huiusmodi ecclesiae Wormaciensis ministros qui certi et publici mercatores non sunt ab omnibus angariis et parangariis, ab exactionibus et collectis auctoritate imperiali absolvimus."

ability.[1] The "Petition or Exaction" shall be the traditional petition, and it shall not be increased.[2] It is probable that in most cases the tax, where it had been levied with any degree of regularity, had become attached to certain houses or plots of land within the town,[3] and it is doubtful whether, even in Hagenau or Frankfort, it affected all the solvent inhabitants. We suspect that, when the bailiff of a royal burgh presented his accounts to his master at the year's end, the *precaria* would be an insignificant amount. It would perhaps exceed the sums paid in house-rent by the crown tenants. It would perhaps exceed the sums levied from the Jews, though this might not be true of Frankfort. But it would not be likely to outweigh the revenues obtained from the sale of the corn grown upon the town fields, of the wine grown in the town vineyards, of the beasts fed in the town meadows, and of the dues levied in the markets and the courts of the town.[4] The *precaria* does not supersede the old heterogeneous revenues. It does not simplify the municipal budget. On the contrary, it complicates it by the addition of a fresh item. It does not provide a common basis for taxation. It may be anything, from the elastic blackmail levied by a predatory or indebted advocate upon the wealthier burgesses of a town, to a fixed annual charge which falls upon certain specified houses or lands.

The history of the tax can best be studied in the episcopal towns. If we look into the *Hofrecht*, or manorial

[1] *Charter to Nuremberg*, 1219. [2] *Charter to Strassburg*, 1219.

[3] Lamprecht, *Deutsches Wirthschaftsleben*, i., pp. 605-7, 1027 ff.

[4] Weiland, ii., p. 338; *Apocha rationis villificationis Gerhardi de Sinzich, burgrave in Landskron*, 1242. In the twelfth century there are vineyards and arable lands within the walls of Mainz (Otto Fris., *Gesta Frid.*, i. 13).

customs drawn up by Bishop Burchard of Worms, 1023-1025,[1] we find that a tax is paid to the bishop by the servants of his fisc whenever he goes to the emperor's court, either for council or for military service. The emperor does not tax the town; the bishop does not tax the town. The tax-payers of Worms are just those citizens of Worms who happen to be the private servants of the bishop. The emperor is merely concerned to see that the bishop acquits his obligations to the Reich. The war of the Investitures changed this state of things, at least so far as Worms itself was concerned. When in the autumn of 1073 Saxony was in revolt, and the southern dukes were alienated from the king, the citizens of Worms expelled the bishop and his army, and marched out in the accoutrements of war to receive Henry IV. From that time Worms became Henry's arsenal and military capital. The contributions of Worms and of Cologne flowed into the king's chest and enabled him to sustain the war. It was the first occasion on which the emperor had been brought into direct relation with the tax-payer of the episcopal cities.

The occasion was not improved. The bishops recovered power, and the old relations were restored. But war is the mother of taxation, and it was probably during this weary half-century of fighting that irregular contributions became regular, and voluntary contributions became forced. In 1157 Arnulf, Archbishop of Cologne, protests that the men of Cologne owe him an army-tax by the law of nations[2] (*jure gentium*),

[1] *Lex Familiae Wormatiensis Ecclesiae*, printed Walter, *Corpus Juris Germanici antiqui*, iii. 775-9; also Weiland, i., No. 438. Cf. Nitzsch, *Geschichte des deutschen Volkes*, i., pp. 364-66; Giesebrecht, *K.Z.*, ii., pp. 71, 2; and Gengler, *Das Hofrecht des Bishofs Burchard von Worms*, sect. 29, "Quattuor denarios persolvat ad regale servitium et vi ad expeditionem."

[2] *Gesta Ep. Cam.*, SS. vii., p. 501.

and the tribute of men so regularly and munificently supplied by the episcopal cities to the wars of Frederick Barbarossa was probably based upon a regular tribute of money paid by the town to its spiritual and temporal chief. Frederick did not attempt, except once, and then unsuccessfully, in the case of Cambrai,[1] to intervene between the bishop and the town. He was merely concerned to insist upon the triple obligation under which the town lay—to contribute to the bishop's journey to the court, to supply funds for the imperial expedition, and to meet the expenses of the emperor's occasional visits. So long as the emperor nominated the bishops, and the bishops controlled the towns, there was no danger in thus standing in the ancient ways, but the policy ignored the possibilities of commercial development as completely as it ignored the possibilities of an ultramontane victory.

Philip of Swabia, who had passed a political apprenticeship among the rising municipalities of Tuscany, seems to have seen this.

He was forced by the necessities of a disputed election to purchase favours freely by selling large portions of the imperial domain. But it was observed that he did not part with the royal towns, which had, no doubt, though direct evidence is not forthcoming, been in the habit of paying regular money contributions to the emperor. In his *diplomata* for Spire and for Strassburg Philip bids for the support of the episcopal towns. The burghers are not to be taxed by the bishop, but are to pay a suitable service to the empire at their own freewill.[2] It seemed as if a *régime* of voluntary contributions paid straight from the town to the emperor

[1] *Vita Arnoldi* (Jaffé, *Bibl.*, iii. 625).

[2] *Burchardi et Conradi Ursp. Chron.*, p. 83; *M.B.*, xxix. 532; Zeumer, *Städtesteuern.*

was to supersede the old *régime* of forced contributions paid by the town to the bishop. All along the Rhine the towns were striving against their spiritual lords, and the first fifty years of the thirteenth century witnessed continual assertions of power on the part of a newly-formed and wealthy municipal patriciate. This is the age in which the town council—the Stadtrath—emerges strong and united from the heterogeneous bodies, sheltered by immunity and local privilege, which had so long paralyzed municipal politics.[1] The union of the rich men (*Richerzeche*) at Cologne, the old men of the Zoo (*die Alten vom Thiergarten*) at Mainz, the *Freundschaften* of Strassburg, Frankfort and Spire, form powerful associations and control the government of their towns. At the same time the expansion of trade had produced an enlarged use of money, and tribute in kind was everywhere in the process of commutation. The German monarchy stood at the parting of two ways. It might ally itself with the rising oligarchies, and obtain from them in return for chartered autonomy a promise of systematic imperial contributions. Or it might continue to strengthen the hands of the bishops, who for centuries had been the pillars of the constitutional structure. Otto IV. appears for a moment to have dreamed of a fiscal revolution. It was rumoured that he meditated imposing a general tax of one or of two gold pieces upon the plough. But the mere fame of the thing was sufficient to lose him supporters; and Otto, an Anglo-French adventurer full of courage but destitute of originality, could never afford to break with the princes. The Archbishop of

[1] Von Below, *Entstehung der Stadtgemeinde*; Hegel, *Städte und Gilden*, vol. ii.; Arnold, *Freistädte*; Blondel, *La Politique de l'Empereur Frederic en Allemagne.*

Magdeburg exacted from the emperor a renunciation of his right to levy taxes in the towns of the archbishop without the archbishop's good will, and a precedent was set which the other princes were only too quick to follow. When Frederick II. ascended the throne, he too was forced to bribe the princes. The alternative plan would have involved not merely a fiscal but a constitutional revolution, for the whole conception of the empire, as it is reflected in the documents of Frederick's court, was of a body of which the emperor was the head and the princes the members. The imperial armies, the imperial justice, the imperial finance all rested upon the co-operation of the close princely aristocracy, and no emperor would think of discarding their counsels or of repudiating their help.

During the early years of his reign, from 1213 to 1235, Frederick II. steadily fortifies the princes against the rising communes. The men of Basle are not to form any new council without the consent and will of the bishop. The commune of Cambrai is annulled. The communes of Provence are annulled. No tax is to be raised from the burgesses or Jews of Worms except through the bishops. Madgeburg, Regensburg, Augsburg are practically given fiscal autonomy. The knights of Oppenheim are exempt for ever from imperial taxation, the burgesses are exempt for ten years. Here we have a monastery exempted from the imperial tax-gatherer in all the towns of Swabia. There we have a charter which makes imperial contribution dependent upon the goodwill of a prince. The resources of the empire are imperilled by grants of autonomy to the princes and directly diminished by grants of fiscal immunity to religious houses. An edict issued from Ravenna in 1231-2, annuls "all communes, councils,

masters or rectors of citizens, or other officials" appointed by the "university" of citizens without the consent of the bishop or archbishop in all towns and cities of Germany, and likewise all trade guilds and confraternities. The policy of the emperor was only revolutionary in the extent of its concessions to the forces of the past,[1] but then came a change of front. The emperor's son, Henry VII., who governed Germany, rebelled against him, and the revolt of 1234-5 led to a relaxation in Frederick's rigour against municipal independence. Whereas the reign of Henry VII. had been prolific in privileges of exemption, very few of such privileges can be assigned to the reign of Conrad IV., who succeeded him as Frederick's representative in Germany. But the policy of favouring the towns at the expense of the princes was adopted too tardily and too half-heartedly and inconsistently to produce durable or valuable results. No Hohenstauffen emperor lived to levy a general direct tax from the German towns. In the later stages of Frederick's struggle with the papacy, when Conrad was confronted with counter-kings, such as Henry Raske and William of Holland, the towns knew how to make their bargains with these feeble pretenders. The city of Cologne tells William that she will only receive him within her walls if he promise not to lead an army into the town or to convoke a court there or to ask for a subsidy. So far from Cologne paying a contribution to Richard of Cornwall, the king has to pay a contribution to Cologne. The fantastic ideals of the empire, with its costly chase after symbols, its long immersion in Italian wars, seem to these practical burghers onerous and outworn. Their faces are set northwards down the swift

[1] Weiland, ii., Nos. 62, 79, 106, 108, 192, 193, 353; *H.B.*, v. 400.

current of the Rhine, which carries their wares across the German Ocean to the steelyard of London, or to the marts of Flanders.

Civic pride supersedes imperial patriotism, as the *Annals of Worms* and other municipal chronicles begin to show, and the first serious attempt to derive a direct contribution from all the cities came from Rudolph of Hapsburg, after a score of anarchical years had dissolved Germany into a loose federation of free towns and principalities. The empire had allowed commerce to escape with a derisory tribute.

Yet in spite of the concessions to the princes, Frederick II. and his representatives in Germany made a real effort to utilize the towns upon the royal domain. Nothing in the action of the emperor was more alarming to the princes than this sudden and vigorous competition of the royal boroughs. The king's agents bid vigorously for traffic and population. They attract the men of the lord's to the king's boroughs. They change the course of roads in order that they may pass through the king's land. They create new fairs, and compel men to attend them. Peasant labour is impressed to build the walls of the king's borough. Corn, wine, and money are demanded from the rustics. The place of the hundred courts is changed without the consent of the lord of the land, in order that the judicial fees may pass into the pockets of the king's officer. One of the king's Jews will lend money to the feudatory of a neighbouring lord upon a mortgage, and the lord will find that his fief is depreciated in value without his consent. The king will buy a castle, and the king's officer will declare that his jurisdiction extends for a mile all round. The king's town may contain a monastery or church, which is protected by a neighbouring

advocate, who makes a living out of the corn and wine, the flocks and herds which are produced upon the estates of the foundation. But the king's officer comes upon the monks or the canons for *Bede* and all manner of exactions. He is near at hand and the advocate is not, and as "the advocaticial men" are drained dry by the royal bailiff, the advocate is forced to go with an empty stomach. The princes viewed all these courses with indignation and alarm, and Henry VII. and Frederick II. capitulated to them in every point in the *Constitutio in Favorem Principum.*[1] That was really the death-blow to the attempt to make anything out of the towns of the royal domain; yet, if we except the cities of Roman foundation, the emperors and kings had been the earliest town-builders. Aix, Ulm, Frankfort, and Salz had grown round royal palaces. The Carolingian emperors had built forts at Magdeburg and Halle, and along the Franconian frontier, and Henry IV. had given city life a new start in Saxony. Even the *Schwabenspiegel* lays down the rule that fortification requires the permission of the empire. But after the death of Henry the Fowler, the monarchy ceases to live up to its past or to its prerogative in this respect. The "eligible sites" are discovered, appropriated, developed by others. The Zähringers found Bern, Burgdorf, and the two Freiburgs. The Welfs practically found Munich and Lübeck, and create Brunswick, Göttingen, Munden, Nordheim, Eimbeck. The Babenbergs create Vienna. Soest grows round a palace of the Archbishop of Cologne. Bonn is a vill upon the archbishop's estate. Heidelberg is in the twelfth century a *castrum* of the Elector Palatine. Even when a town is built upon

[1] Weiland, ii., No. 171.

imperial property, it rapidly acquires independence. There are free towns upon the domain, just as there are free towns outside the domain. A study of the thirteenth-century imperial itineraries reveals one significant fact—the repeated residence of the royal court at somewhat unimportant places, such as Hagenau and Ulm, just because they happened to be upon the royal domain. The free towns and the seigneurial towns were tired of the old burden of hospitality. The crown must live upon its own.[1] The misfortune for the crown was that, with the exception of Frankfort and Nuremberg, there was not a single city of first-rate importance upon the royal domain.

In all this period there had been no central chest, and no connected attempt to deal directly with the taxpayers of the most important cities. The money which was from time to time collected from the towns upon the royal domain was spent *in situ* by the royal bailiff. If there was ever a budget it has not survived. The surplus was a luxury of an undreamed-of future. Taxes were raised and spent hand to mouth. A miscellaneous tribute, partly in kind, partly in money is levied by a royal bailiff in the royal borough. Jews and farmers, litigants and traders pay their separate quotas. There are profits upon the sale of wine and on the rent of houses. There are goodly sums collected from the "enemies of the empire" who break the peace and infest the roads. The royal bailiff cannot add up these sums properly, for his arithmetic has been neglected, but he remembers the separate items. The expenditure is far in excess of the receipts. The bailiff has manufactured engines of war, hired crossbowmen and knights, made costly expeditions on the imperial service. His house

[1] Von Maurer, *Fronhöfe*, iii., pp. 386-7.

has been burnt, his wine and corn spent, his land ravaged by fire. For sixteen weeks he has kept together a force of forty men-at-arms for the emperor, and received nothing for them, and he has been ordered to dismiss the captives, whose ransom might have covered the deficit. This is the substance of an account sent in to Conrad IV. in 1242 by the Burgrave of Landskron.[1] Yet in the thirteenth century the opulence of Cologne and Mainz and Regensburg and Vienna was known throughout the western world, and in the fifteenth century Germany was the richest country in Europe.[2]

It is needless to add that there was no general imperial taxation. It has, indeed, been said that in 1084 Henry IV. attempted to pay the expenses of his Italian war by requiring a subsidy from his bishops and abbots and almost all the princes. We learn also that he did obtain very large sums from Regensburg and from almost all the cities in Germany, and that these proceedings caused him to be bitterly hated through the length and breadth of the land.[3] Henry V. was unpopular too, and the rumour went round that the husband of Matilda of England was designing a German version of the Danegeld.[4] Frederick I. was a man of expedients, but he knew the German temper. He annexed the Jews to the imperial treasury, com-

[1] Weiland, ii., No. 338.

[2] See the impressive mass of testimony as to the opulence of Germany in the fifteenth century collected by Janssen, *Geschichte des deutschen Volkes*, i., bk. iii.

[3] Cf. the "Fragment of Bavarian Annals," printed by Giesebrecht, *K.Z.*, iv. 514.

[4] Otto Fris., *Chron.*, vii. 16, "Consilio generi [*sic*] sui regis Anglorum totum regnum vectigale facere volens multum in se optimatum odium contraxit."

pensating them with privileges.[1] He claimed the right of spoils and of regalia from the Church, he bought advocacies and fiefs, he required the towns to pay an imperial tax, the *Reichsteuer*, to the bishop. But his attention was mainly directed to Italy, and he introduced no fruitful principles into German finance. Philip of Swabia is said to have obtained the consent of the princes to a general subsidy for the relief of the Holy Land, but we have no evidence that the subsidy was ever collected; and so averse was the country to anything like systematic taxation, that the mere rumour of an intended common imperial tax certainly lost Otto IV. some of his most influential supporters.[2] In spite of the financial efforts of Rudolph I., who succeeded in levying a tax for the subvention of the empire from the free imperial towns as well as from some of the princely towns, there was no proper imperial tax levied in Germany until the Hussite wars. The Hussite wars of the fifteenth century did in a painfully incomplete manner for Germany, what the Danish wars had done so completely for England five centuries earlier. Compare for a moment the story of the common penny in 1429 with the financial revelation of our Dialogue of the Exchequer in 1166. The archives of at least one German town are full of complaints against that most necessary tax. There was no adequate machinery for collecting it; there was no official assessment. The tax was partly a poll tax, partly an income tax, partly a property tax, partly a tax regulated according to social rank. Important towns—Strassburg, Halberstadt, Constance—

[1] Lamprecht, *Deutsches Wirthschaftsleben*, i., p. 1453, remarks that in the middle of the thirteenth century Jews are found residing in all the old *fisci* or royal estates in the Moselle region.

[2] *Annales Reinhardbrunnenses*, ed. Wegele, pp. 128, 139.

refused to pay it. Important nobles refused to pay it. It was paid in depreciated coin and in buttons. And then look upon the system of the English exchequer under Henry II., with its triple control at the centre, its obedient sheriffs and judges, its abundant supply of trained financial skill, its elaborate rolls, its fixed routine, its severe tests. Perhaps if Frederick I. could have kept hands off Italy, Germany might have had a financial system in the twelfth century. But Frederick I. and his successors looked in the main to Italy for their money and to Germany for their men[1]; the financial genius of Frederick II. was deployed south of the Alps, and this lamentable diversion of governing energy, at a critical period of the nation's history, contributed to make possible the ludicrous episode of the common penny of 1429.

[1] *H.B.*, iv. 930, v. 1071.

CHAPTER VII.

THE EMPIRE AND THE GERMAN NOBILITY.

If we compare a map of Germany in the middle of the tenth century with a map of the country in the middle of the thirteenth century, we are confronted with a striking contrast. The tenth-century map is extremely simple, the thirteenth-century map amazingly complex. While the tenth-century map shows a land divided into four large divisions, representing the four German races, the thirteenth-century map shows us a land covered with principalities, lay and ecclesiastical, some of them inextricably intertwined with others, and none but the smaller ones presenting a continuous surface to the eye. We shall also be struck by another contrast. While the earlier map will show us a Germany bounded on the east by the line of the Elbe and the Saale and the Bohemian mountains, the later map will show us a Germany which extends as far to the east as the Oder, and which includes Bohemia, Moravia, Austria, and Carinthia. There has been a considerable subdivision of political power in the old German lands, and a considerable extension of German influence over the lands of the Slave and the Magyar. If we look for the four ancient duchies, we shall find that they have undergone considerable transformation. They have been carved

into fragments which do not correspond with the old racial lines. The old Duchy of Saxony is partitioned between the See of Cologne, the Duke of Westphalia and Engria, who in reality only possesses central Saxony, the Archbishops of Bremen, Magdeburg, Mainz, the Bishops of Meissen, Halberstadt, Hildesheim, and others. There are powerful nobles too, like the Counts of Holstein and Schauenburg, who are independent of the duke, and are immediately subject to the empire. On the northern shore the Dithmarshers have conquered an independence which is little short of complete, the neglected Frisians, torn by internal rivalries, have intermitted their ancient democratic gatherings at the Upstalbom, while Thuringia, which had long been a march attached to Saxony, has, ever since 1130, become a separate landgraviate, which has incorporated the greater part of Hesse. The name of Saxony only survives in the Saxon march, which is the kernel of the future kingdom.[1]

The Duchy of Bavaria has preserved more of its individuality, and it corresponds more nearly to the Bavarian race limits. But this correspondence, though comparatively great, is by no means exact. In 1156 Frederick Barbarossa, to conciliate the rival claims of Henry Jasomirgott and Henry the Lion, had taken the Austrian march, which had been colonized from Bavaria, together with a certain number of Bavarian

[1] Blondel, *La Politique de Frederick II. en Allemagne*, pp. 97, 98; Weiland, *Entwickelung des Sachischen Herzogthums*, p. 88; Lavisse, *Etude sur l'une des origines de la monarchie prussienne*; Volkmar, *Geschichte des Landes Dithmarschen*; Knochenhauer, *Gesch. Thuringens*; Rive, *Ueber den Freistadt Dithmarschen*; Menzel, *Gesch. Thuringens*; Von Richthoven, *Untersuchungen über friesische Rechtsgeschichte*; *Gött. Gelehrte Anzeige*, 1881, 1357; Von Rommel, *Gesch. von Hessen.*

counties, and made of them an Austrian duchy. It was the first dismemberment of Bavaria.[1] But if the dukes of Bavaria had lost Bavarian land on the east, they had gained non-Bavarian land on the west. In 1214 a duke of Bavaria obtains the Rhenish Palatinate; in 1225 he receives, as a fief from the Bishop of Worms, the city of Heidelberg, which is to become the capital of this Franconian annex to the Bavarian duchy. There are henceforth two Bavarias ruled by members of the same family: one upon the Rhine, the other upon the Danube. Nor does the duchy of Bavaria proper present a continuous political surface to the historical geographer. There are a certain number of independent ecclesiastical territories, such as the bishoprics of Salzburg and of Regensburg, over which the duke has little power.[2] There are a large number of imperial abbeys, such as Wessobrun, Benedictbeuern, Ottobeuern, Ellwangen in the diocese of Augsburg; Tegernsee and Ebersberg in the diocese of Freising; St. Emmeran, Ober and Niederminster in the diocese of Regensburg; Chiemsee and Berchtesgaden in the diocese of Salzburg. There are also a large number of possessions which, belonging originally to the Welfic family, came to Frederick I. as heir to Henry the Lion, and which belong, therefore, to the Swabian duchy of the House of Hohenstauffen, though situated within the geographical area of the House of Wittelsbach.[3]

The duchy of Franconia has been subjected to a

[1] Blondel, p. 97.

[2] The *Schwabenspiegel* lays it down that all bishops must attend the court of the duke in whose principality their sees lie, and this obligation is affirmed for the Bavarian bishops in *M.B.*, xxxvi., p. 529; Riezler, *Herzogthum Baierns*, pp. 186, 189; *Geschichte Baierns*, ii., p. 10.

[3] *M.B.*, vi. 498, 502; Blondel, p. 99.

similar process. Eastern Franconia has passed in the main to the Counts Palatine of the Rhine, and the Counts Palatine of the Rhine are now members of the ruling house of Bavaria. But there are a large number of independent towns and lordships which are the immediate vassals of the empire, which are independent of the count, who keeps his court at Heidelberg. Eastern Franconia is no duchy, although the Bishops of Bamberg and Wurzburg possess the ducal title.[1] It is divided between the Hohenstauffen, who possess large landed estates here, between numerous lords and lay princes, and a few great ecclesiastical proprietors. It is these ecclesiastical sovereigns who give the district its distinctive character, who earn for it the title of the Priests' Alley, which it was not to lose until the secularizations of Napoleon. Of all the four duchies on our tenth-century map, only one—the duchy of Swabia—will re-appear in very much its old shape at the close of two and a half centuries. It is because the duchy has been annexed by the Hohenstauffen and the title of the duke merged in that of the king.[2] But although the unity of Swabia is preserved in appearance, there was no quarter of Germany which was equally ripe for political dissolution, no quarter which was so full of ancient noble families anxious to assert their independence.[3] At the fall of the Hohenstauffen dynasty the "morcellement" of Swabia far exceeds the "morcellement" of Bavaria, and Saxony is split into as many fragments as Eastern Franconia.

[1] *F.D.G.*, xiii., p. 87; *Mitt. d. Inst. für Öst. Geschichtsforschung*, 1890, p. 528.

[2] It was the custom of the Hohenstauffen to give the duchy of Swabia to their sons or nephews.

[3] Riezler, *Gesch. Baierns*, ii. 13.

It is clear then that the old grouping of races has been to some extent superseded by a grouping of another kind, that the political unit is by the middle of the thirteenth century no longer a primitive local division like the county or *gau*, or an artificial and official circumscription like the Comitatus of the eighth century, or a large tribal area under a popularly elected or royally nominated duke, but a feudal territory, governed by some hereditary lord. Let us look at a duke of Bavaria at the beginning of the thirteenth century. He keeps a court in right royal style; he has a Chancery and a Privy Council. His land is divided for purposes of revenue and jurisdiction into thirty-five districts or "offices," presided over by ducal nominees.[1] It is taken for granted that his duchy is hereditary, and that in case the duke has no children he can dispose of it at will, so much so that Lewis I. actually makes a compact to transfer his duchy to the Bishop of Ratisbon, in case he should die childless.[2] The judicial powers of the duke are most extended. The *Landgerichte*, formerly popular tribunals, have become ducal, and in virtue of the general principle of Germanic law, that a superior tribunal could always be substituted for an inferior one, it was possible for litigants, except in cases involving the transfer of real property, to give the go-by to the courts of the counts and to appeal direct to the duke. Again, if a count who should be the duke's vassal—and in Bavaria, owing to the failure of a large number of old noble families at the beginning of the thirteenth century,

[1] *Urbarium Ducatus Baiuwarie Antiquissimum ex anno* 1240, *M.B.*, xxxvi., pp. 1-138, 529, viii. 135, i. 275, xii. 62, iii. 156, xiii. 221; *Quellen und Erörterungen zur Bayrischen Geschichte*, v. 18; Bresslau, *Handbuch der Urkundenlehre*, i. 446-60.

[2] Riezler, *Gesch. Baierns.* The compact was confirmed by King Philip [Böhmer-Ficker, *Reg. K. Philipps*, pp. 119, 120].

there are many such—should not perform his judicial duties, he can be deprived of his office. In all disputes between nobles and important persons the duke must intervene.[1] As the duke is, if not in theory at any rate in practice, supreme judge, so is he the supreme maintainer of the peace. Henry the Proud, on his accession to power, goes through all his duchy, to destroy the castles of the peace-breakers.[2] In a constitution of 1186 Frederick I. declares that all incendiaries are to be punished by the duke.[3] It is the duke who summons the *Landtag* or provincial assembly, which must be attended by all the principal persons of the duchy, by the counts, and even by the imperial bishops upon pain of a fine.[4] It is in these *Landtags*, which he may summon or intromit at his pleasure, that he receives the homage of his vassals, that he legislates—in so far as a Bavarian duke of the thirteenth century did legislate for his province—that he tries the Bavarian nobles, who have become involved in crime or litigation, that he confirms the privileges of important laymen, or of ecclesiastical foundations. He possesses besides many important regalian rights, coining money bearing his own image,[5] levying market dues and tolls,[6] and when

[1] Rosenthal, *Geschichte des Gerichtswesens und Verwaltungs-organization Bayerns*, vol. i., pp. 48-52, 108 ff.; *M.B.*, vii. 487, iii. 294, viii. 135, i. 276, xiii. 221.

[2] Hess, *Mon. Guelf.* p. 23, SS. xvii. 465.

[3] Wieland, i., No. 318.

[4] Riezler, pp. 10-12; *M.B.*, ii. 357, iv. 280, xii. 62. Landtags are recorded for 1180, 1192, 1207, 1209, 1210, 1225, 1228, 1233, 1239, 1240, 1255. Lewis II. [1253-1294] never summons a Landtag. For the legislative activity of these Landtags, cf. Otto Fris., *Gesta Frid.*, i. 469; SS. xxi., p. 454-72; *Aventini Annales Boiorum* (ed. Grundling, Leipzig), p. 617.

[5] *Quellen und Erört.*, v. 8.

[6] According to Lang [*Bairische Jahrbücher* (1816), 324] the income of Duke Lewis I., who had the counties of Scheyern, Dachau, Wartenberg,

he goes to war he is followed by a goodly train of vassals.

Let us cross the Lech into Swabia, the *locus classicus* of the great order of counts. Their condition has been described to us carefully by Baumann.[1] Originally officials, with judicial and military authority over a district which may be called either *Gau* or *Comitatus*, they have become feudal lords, exercising political authority over a district, which in most cases bears no sort of resemblance to the original area of their official duties. The county has become a mere geographical area, alienable at will and divisible at will; the count takes his name from his patrimony, from his seat of judgment, from his castle; the title of count becomes a title of honour shared by every member of a family which has ever enjoyed the old official dignity usurped by simple nobles. And the judicial functions which are associated with the title are no longer regarded as being conferred by royal authority, but as a hereditary right inherent in the ownership of the soil. It is perfectly true that some official counts still remain, the nominees of the Hohenstauffen emperors, but we may conjecture that their number was small, their situation precarious enough, unless they happened to be large proprietors in the district over which they were appointed to exercise political rights. Here then,

Vohburg, Neuburg, Ingolstadt, Munich, Reichenhall, Burghausen, Strassburg, and Landshut, was 100,000 marks of silver; one-sixth tribute in kind and free entertainment; one-sixth taxation and share of tithes; two-sixths tolls, mint, salt; two-sixths leases of offices and fiefs. Lorenz, *Deutsche Geschichte des xiii. u. xiv. Cent.*, p. 382, assesses the Bavarian income at 100,000 marks, that of Cologne at 50,000, that of Brandenburg at 50,000. Cf. Hoffmann, *Geschichte der directen Steuern in Baiern* (Schmoller, *Forsch.*, vol. iv., p. 2).

[1] Baumann, *Die Grafschaften im Wirtembergischen Schwaben, Grafenamt und Grafenbesitz, Geschichte des Allgaus;* Roth von Schreckenstein, *Geschichte der ehemaligen freies Reichsritterschaft.*

we have a momentous historical transformation. The work of shaping and organizing and developing the old German races has fallen not to the empire but to the nobility to accomplish. And if we ask how these miscellaneous political units which appear upon the German map in the thirteenth century were formed, we shall have to answer that they were due far less to the policy of a central government dividing that it might the better rule, or to the imperious dictates of immemorial race affinities than to the arbitrary play of private contract, and to the confusion between office and property, between public and private functions, which is sure to arise in the absence of a strong central administration.

Let us see how this came about. In France, in England, and in Germany the nobility play a great part in medieval times, but it is only in Germany that the part is a winning one. In England the big landed proprietor is quickly got hold of by the state. He is made responsible for the conduct of his dependents, for the geld which they owe to the king for the defence of the country against the Danes, for contributions to the host, for contributions to the building of the county bridges, the defence of the county town ; and his power is balanced by the survival of the popular courts of the shire and the hundred. Thus, even in Saxon times he is a servant of the state, not indeed necessarily in virtue of the tenure of his lands—although there will be many contracts made by which land is accepted either from the king or from another upon condition of performing public services—but in virtue of the fact that he is the most convenient and obvious instrument through whom the state can enforce the common-law obligations which rest upon every freeman. After the Norman conquest

the pressure of the state upon the individual rapidly increases in intensity. It has become the theory that all land is held immediately or mediately of the king, and there is no escaping the feudal pyramid. The loose and fluctuating personal tie which had been constituted when a man commended himself to a lord in Anglo-Saxon times becomes, so to speak, solidified into a territorial tie. The relations of man and man become relations of tenure, and as the lord can come down upon the land for his services, and the state acts upon the lord's dependent through the lord, the state comes down upon the land as well. By degrees, and the degrees come rapidly, all the public obligations which a man can owe to the state become fixed in the soil; the duty of attending the public courts, the duty of attending the host, the duty of paying so much geld, or ferm, and ultimately the duty of voting for a member of parliament. The convenience to the state is enormous, for land is stable, unable to absent itself, capable of being surveyed, valued, docketed, used as a pledge for human good conduct, confiscated as a punishment for human misconduct. And the Norman government is strong enough to enforce and to strengthen these obligations. It has a comparatively small country to deal with, and a comparatively small number of strong nobles to coerce. And when need of coercion arises, it can use the Saxon militia as a bludgeon, and the province of Normandy as a safety-valve. But violent measures are not long necessary. In a little more than a hundred years after the conquest the last revolt of the Norman barons has been quelled. The ranks of the baronage have been recruited by a new official nobility, the king's judges are going circuit, and a system of government has been established which uses

and which reaches every man in the kingdom. The nobility has ceased to exist as a separate caste. There are barons greater and lesser; the first of whom deal directly with the king's exchequer, and receive a special summons to the king's councils, while the others deal with the exchequer through the sheriff, and are summoned to the councils through the sheriff. But although the old Germanic doctrine still survives, that a man should be tried by his peers, it is becoming recognized that the king's judges, more especially the judges of the exchequer, are the peers of any man; that the king's criminal justice penetrates into any lordly franchise; and that no man has a right to advise the king in council unless he has received a summons from the king. The rapid and effective centralization of power in England has deprived feudalism of its political dangers, and made the nobility instruments to the will of the state.

In Germany social history wrought itself out to another issue, and reading the result into the process, we may be tempted to think that the issue was an irresistible result of the social condition. Yet a closer inspection of the development of the German nobility from the eighth to the thirteenth century suggests an opposite conclusion, and refers us for an explanation to a number of assignable causes of a political rather than of a social character. We find the victory of the nobles to be due, not so much to the original strength and consistency of a class, as to a combination of geographical and political circumstances, among which the erroneous direction of the imperial policy is by far the most important.

Now two of the most conspicuous social facts revealed by the documents of the Carolingian Age are the

absence of a nobility of blood among the Franks who are the ruling race, and the growth of enormous landed properties, especially of enormous landed Church properties. And if we ask what the most important political facts are, we shall answer that they are, in the first place, the rise of a dynasty of strong rulers in Austrasia, and secondly, the constant draft upon the military energies of the Frankish people, caused by the Saracen, Lombard, and Saxon wars. The co-operation of these four causes transformed the structure of the state. The absence of a blood nobility among the Franks is a remarkable phenomenon, for in Saxony, in Frisia, and in Bavaria there was a noble caste, protected even in the Carolingian times by a special wergild. But although a certain respect does seem to have been paid to blood by the Franks, we can find no traces among them of anything approaching a noble caste. The terminology of the historians, of the charters, of the laws is neither certain nor precise, and it is clear that the social outlines which marked the superior from the inferior ranks of society were still vague, floating, and indefinite. High office at court or in the provinces, proved descent from distinguished families, large property, influence with the king, would each and all of them be sufficient to confer one of those vague titles of honour with which the documents of the time abound. The early Carolings were strong enough to take advantage of this situation, and they formed a large official nobility of prelates, dukes, and counts, often promoting men of the humblest birth to such high offices. But while in this manner they were enabled to provide more easily for the government of the country, they were brought face to face with a

social fact which seemed likely, unless rapidly dealt with, to deprive them of anything to govern. This fact was the enormous accumulation of landed property by the Church. In the time of Charles Martel it was reckoned that about one-third of Gaul had become Church property, that is to say that one-third of Gaul had fallen into the hands of a corporation whose duties towards the state were undefined and uncertain. Charles Martel and his successors, Carloman and Pippin, were faced with enormous public dangers, and they did not stop to theorize upon the situation. It was never stated that ecclesiastical land belonged to the king or the fisc, or that the king had any special claim upon it. What happened, however, was that Charles Martel appointed dependents and relatives, laymen though they might be, to abbeys and bishoprics, and carved out a number of benefices from the property of the Church, to be held of the ecclesiastical foundation on condition that the holder should discharge public functions; and then his successor Carloman went still further and declared that, owing to the pressure of war and public necessity, he would for a time annex part of the Church property for military purposes, providing, however, that a sum of twelve pence from every household should be annually paid to the proprietor from the benefice carved out from his estate. The lands thus temporarily annexed for state purposes were never completely restored. At the accession of Pippin we learn that the Church property was described and divided. An inventory, in other words, was taken, which may have been the prototype of those wonderful ninth-century inventories of Church property in France which go under the name of *polyptyques*, and which formed

the basis upon which the Church lands were let out to vassals upon the condition of the performance of services or the payment of dues to the state.[1] In this way a large proportion of the soil of France became burdened with public obligations, assigned, recorded, and ascertainable. The effect of such a measure must have been enormous. It enabled the king to turn to the public advantage the movement towards territorial aggregation which seemed so dangerous; it enabled him to obtain services from a large number of beneficiaries; it enormously stimulated the granting of benefices to be held of the king on condition of performing stipulated services; it created a landed class, wide and heterogeneous, but with this common characteristic, that all its members were specially bound to the state. And finally, it affected the bestowal of offices: counties and duchies come to be treated as benefices, office comes to be confounded with property.[2] The conceptions which belong to the relations between a man and his tenants become confounded with the conceptions which belong to the relations between a representative of the state and the people whom he is commissioned to govern.

Now this process was by no means complete even in Western Francia during the life of Charles the Great, and it had made very little way at all in Germany. Offices were not yet treated as benefices. Benefices were not universal. Neither offices nor benefices were as yet hereditary. Military obligations had already become inherent in land, but not necessarily in beneficial land. Although the legislator is prepared to work upon men through their lords, the normal way of working upon them is through their counts, through the

[1] Mühlbacher, *Deutsche Geschichte*, p. 51. [2] Waitz, *D. V.G.*, iii. 216, 217.

nominated removable officials, who represent the king in the provinces. Indeed the official system of the Carolings was really more long-lived in Germany than in France. It was imposed upon Saxony after the country had been crushed by a long and arduous war, and upon Bavaria after the fall of the last Bavarian duke. The fact that the officials were mainly Franks, while the country which they administered was mainly non-Frankish, the long and vigorous rule of Lewis the German, the survival of a large number of freemen in Germany, who attended the *echte* [regular] and *gebotene* [extraordinary] *Dinge* [court-days], and perhaps also the fact that great lay properties were slower to accumulate in Germany than in France, may contribute to explain the relatively greater permanence of the official system.

The beneficial system too had been far less extensively introduced in Germany than in France. When Charles Martel and Pippin were carving benefices from Church property in the West, Boniface was only just introducing Christianity to the East of the Frankish Empire, and the distance of Germany from the area of the Saracen conflict retarded the growth of cavalry warfare, which was in turn one of the active causes of the development of the feudal system. Then, after the death of Charles, came the division of the central power, and the Norman, Saracen and Hungarian invasions. In England the Danish invasions had a bracing effect; although they may have precipitated the process by which freemen commended themselves to lords, and the process by which definite contributions of warriors to the host were assigned to definite portions of land, yet at the same time they strengthened the monarchy, gave it prestige, a definite mission, and enabled it to utilize the nobility towards the ends of the state. But

on the Continent the invasions of the Barbarians were far more penetrating and destructive than they were in England, and they were assisted by the mutual antagonisms of the different members of the Carolingian House, and by the vastness of the territory which the Carolingians were called upon to defend. Thus, while in England the invasions stimulated the development of government, on the Continent they paralyzed it. While in England they produced the Danegeld, with all its great social consequences, increased state-action through the lord, increased responsibility of the lord for his dependents, increased dependence of the freeman upon the lord, on the Continent they did not produce a single symptom of central energy. The capitularies of the time became capitulations. The monarchy acknowledges the heredity of benefices, it allows its officials to lose their offices, to become beneficiaries, that is to say, hereditary practically independent nobles, and helplessly devolves upon them the task of governance.

By the tenth century this process of decomposition had gone very far in France. The country had become completely feudalized. In Germany, however, the situation had from the first been different. Although the Frankish official system of counts, of *Missi Dominici*, was imported into all parts of the country by the conquests of Charles the Great, yet the old blood nobility was allowed to survive both in Saxony and in Bavaria, and in Saxony many of these native nobles were appointed to the office of count. On the other hand, large landed properties were being formed by laymen, as the agricultural exploitation of forest and waste proceeded; the royal domains were extensive and widely distributed, and the Church had already become an almost princely proprietor.

At the accession of the Ottonian dynasty then, the elements out of which a large noble class was to be formed were all in existence. There were a few old families; there were many large proprietors; there were the tribal dukes whose offices were partly elective, partly nominated by the king; there were the counts, whose offices were at any rate theoretically derived from the king. And there were two other factors of importance. Primogeniture, as we have seen, was alien to the German mind, and all through the medieval period the equal partition of inheritances was the rule, constantly correcting the excessive accumulation of territorial wealth in a single hand. And in the second place there was, at any rate in Saxony, a considerable mass of free peasantry which had not yet become subjected to the aristocracy.

It seems likely, therefore, that an intelligent monarchy would have been able without any great difficulty to drill this shapeless landed aristocracy into a national system even as the Anglo-Saxon and Norman kings drilled their lieges and barons. There were, however, in Germany two difficulties which did not exist in England, and one difficulty which did not exist in France. These obstacles were the largeness of the German empire and the homogeneity of the German people. It is unnecessary here to point out the great advantages which the kings of England, Sicily, and Arragon derived from the compact and manageable size of their kingdoms, and conversely it is needless to emphasize the great difficulties which mere geographical expanse threw in the way of centralization both in Germany and in France. But some words are necessary to explain how it was that racial homogeneity should have been a source of weakness rather than of strength. The

early Carolings were able to preserve their official class, because it was a class composed of Franks, who were never a large body, sent out to govern Latinized Celts, Swabians, Bavarians and Italians. The Normans were for a time able to preserve an official class, because the officials were Frenchmen who were sent out to administer justice among Saxons. But to send a Saxon to Bavaria or a Bavarian to Saxony was not a sufficient exile. The Saxon who is sent to be duke in Bavaria takes root almost instantaneously, and becomes a Bavarian, the leader of the nation, the representative of the nobility. So too the Swabian who comes to Saxony to hold an office easily becomes a Saxon magnate. The break-down of the system of *Missi Dominici*, the lack of a distinguished court, the absence of any strong external stimulus after the victory of Otto over the Hungarians at the Lech, the sparseness of the population which must have made the pecuniary value of some of the counties very slight, the grave difficulties in the way of intercommunication caused by distance, marsh, and forest, the self-sufficing economy of the manor must all have contributed to convert the official into a landed proprietor with independent political functions. When it is remembered too that the count often received a benefice from the king in the district in which he was appointed to hold office, that he was often appointed to the office because he possessed allodial property or held fiefs in the district, and that the county was often given in the form of an enfeoffment, it is not surprising that the office should come to be confounded with the fief, and that, as the fief became heritable, the office should become heritable as well.

These tendencies are all observable at the very

beginning of the tenth century, and very little was done to check them in the case of the count. In the reign of Otto I., Count Uto by the permission of the king divides his benefice and his "county rights" among his sons. The king's request is asked, but in reality his assent will be assumed, for he can do very little to uproot a count when once he has been appointed. If he nominates a low-born man to the office there is at once opposition; if he expels a count the count's sons rise against him, and the old family is always victorious. The rule in fact is that counties are hereditary, that they may be held by boys, that they descend through females, that they even may be administered by a female. So far from thwarting the process, the kings often give a county away as so much property (*proprium*), and by the end of the eleventh century we actually have an instance of a county in the market. The county has become a bundle of rights inherent in the soil, capable of being valued, alienated, divided, accumulated, inherited according to the free play of private contract. At the beginning of the tenth century a Count Ansfrid in Lorraine has fifteen counties. The counts of Brunswick have about the same number in Saxony. The Nordheimers have county rights in seven *gaus*. Ambitious prelates acquire counties by purchase, or transfer their county rights to nobles whose military aid they are desirous of acquiring without ever troubling themselves to obtain the royal consent. The old county district or *gau* rapidly disappears as an area of administration as soon as the count's office becomes the count's property. In the second half of the twelfth century the *gau* names disappear from the diplomata; the participation of the people in the jurisdiction of the court had disappeared far earlier everywhere except in Nordal-

bingia, and the count had completely divested himself of his ancient character of the official who is sent out by the central government to administer the *gau*, to preside over its judicial assemblies, to lead its people to the host. He now begins to call himself more and more after his castle, his family property, less and less after his *gau*. In some parts of the country, where the royal authority is specially weak or where there are large opportunities for colonization, as, for instance, in Thuringia or in Alsace, the count becomes still more independent and powerful. He calls himself a *comes terrae*, a landgrave. His position is practically that of a duke of Bavaria or of Saxony upon a small scale.[1]

If there was one office rather than another over which it was desirable that the monarchy should exercise control it was that of the margrave, the military and civil commander of the marches or frontier districts on the east and west. By keeping control of the marches with their mixed population of colonists and subjects, the monarchy would be able to direct and to profit by the continuous movement of the German conquest and colonization towards the east at the expense of the Slaves and the Magyars, and to obtain for itself a safer territorial basis than was afforded by any one of the four German duchies. By losing control of the marches, the monarchy found itself confronted with a number of powerful hereditary princes, whose position was fortified by the military character of their mission, and by the absence of numerous competing noble families on their domains. Yet from the first the marches tend to become hereditary. In Austria, an East Frankish family, the Babenbergs, maintain themselves from 974 till 1247. By the *Privi-*

[1] Waitz, *D.V.G.*, vii., pp. 1-61.

legium minus of 1156, their margraviate is promoted to be a duchy, in which the duke exercises exclusive right of jurisdiction, which is transmissible through females, even through collaterals, which becomes in fact an independent principality.[1]

In Styria the son bears the title of margrave even during the lifetime of the father, while the different margravial and ducal lines of Carinthia and Istria are all connected with one another through the female.[2] If you travel northwards to the Saxon marches, you find the same story repeating itself. Examine, for instance, the history of the March of Meissen, which was established by Otto I. some time between 965 and 968. It is not a very large march,[3] it has other marches for competitors, it is not far distant from the main residences of the Saxon and the Franconian emperors. The margraves of Meissen are, many of them, not conspicuous for their loyalty to the empire. Some, on the contrary, are conspicuously disloyal, such as Margrave Ekbert II., who turned his coat nine times during the Saxon wars. And by a singular piece of good fortune for the empire not only did four margravial lines expire without direct male heirs in the course of a period not much exceeding one hundred and fifty years, but the large allodial property of the first of these lines, the Ekkehardiner, was left by will to the emperor. Yet from the days of Ekkehard I., the son of that Thuringian warrior Gunther who died fighting against the Saracens at Cotrone [982], himself a notable warrior and leader of Thuringians in the Slavic wars, the march is for all practical purposes a family affair. In spite of the fact

[1] Meiller, *Regesten der Babenberger*; Blondel, p. 103.
[2] Waitz, *D. V. G.*, vii., p. 91.
[3] Posse, *Die Markgraven von Meissen.*

that this Ekkehard aspires to the crown on the death of his master Otto III., rebels against the successful candidate Henry, and has to be put out of the way by the vulgar contrivance of a murder, the family persists obstinately in Meissen. The vacant margraviate first goes to a step-brother, then after an interval of only five years to the eldest son Hermann, then on Hermann's death to his brother Ekkehard II., a man who has none too good a record, for he has steeped himself in secret intrigues with the Polish king, has been solemnly put to the ban of the empire, and deprived of all his property. Nevertheless, once a margrave he becomes loyal enough, a great figure in the councils and campaigns of Henry III., "Our beloved marquis Ekkehard, the truest of the true," as the documents style him, and a substantial benefactor of the monarchy as his last will and testament proved, for, dying without sons, he left the emperor his heir.

These Ekkehardiners left a strong imprint upon the history of these parts. Ekkehard I. unites the Thuringian marches of Merseburg and Zeitz with Meissen, bows the men of Oberlausitz to his yoke, founds the town of Naumberg, where the expelled Bishop of Zeitz finds headquarters, and which becomes ecclesiastically and commercially important, with its Collegiate Church of St. Peter and St. Paul containing the bones of many deceased Ekkehardiners, and a thriving market, where Slavish and German pedlars make use of a coinage stamped with Ekkehard's own name. His son Hermann rescues the Oberlausitz from the Poles; makes large gifts to the See of Naumberg, while Ekkehard II. helps Henry to bring Bohemia into subjection. When, therefore, Henry has to dispose of the margraviate, he looks about for connections of this influential house. Divid-

ing the March of the Ekkehardiners into two, he gives the Thuringian March and Oberlausitz to Margrave Dietrich of Wettin, a nephew of Ekkehard II., while Meissen goes to William IV. of Weimar-Orlamunde, a member of an old Thuringian family, which had speculated in rebellion under the Ottos, but which had since come to the conclusion that a loyalty was a more profitable game. This William was the stepson of Dietrich. He was thus connected with the old margravial family.

In 1067 this Weimar-Orlamunde line died out, but not before it had reunited the Thuringian to the Misnian March. It was a dynasty which had produced one margrave of valour, and another of extreme unpopularity, the Otto who consented to the Thuringian peasantry being tithed by the See of Mainz. But in spite of the fact that it was a short-lived dynasty, and finally it would seem an unpopular dynasty, the next margrave, Ekbert I. of Brunswick, representative of an illustrious Saxon house, the Brunos, actually contemplated putting away his wife, who was the Queen's aunt, in order that he might marry Adela, the widow of his predecessor, Count Otto of Weimar. And so strong had the hereditary principle now become that the son of Ekbert I., who was made margrave during the lifetime of his father, when he had not yet passed his seventh year, married Count Otto's daughter as soon as he had attained maturity. This Ekbert II., cruel, cynical and ambitious, plays a famous part in the turbulent story of the Saxon war, ending his life under the ban of the empire, hated by the Saxon princes as well as by the adherents of Henry. Yet when he dies without heirs-male the March of Meissen is not really at the disposal of the empire. It goes to Henry of Wettin,

member of an influential Thuringian family which had thrown itself vigorously upon the Saxon side during Henry's reign, one of whose members had even accepted a bishopric from the anti-King Rudolph of Swabia. And Henry of Wettin takes the step which has now become traditional. He marries the nearest female relative of the late margrave, Gertrude, sister of Ekbert II., mother by a former marriage with Henry the Fat of Nordheim of Richinza, the wife of Lothair the powerful Saxon duke. Once established in the March of Meissen this family of Wettin is inexpugnable. It lasts until the March of Meissen grows into the electorate, and then into the kingdom of Saxony, until the little old town of Naumberg becomes exchanged for the splendid capital of Dresden, standing in a Slavonic land, by the rushing waters of the Elbe. Yet, had the empire preserved any influence in these regions it would have been possible to arrest the growth of these Wettins; for the first margrave died in 1105, leaving a widow to govern the march for his infant son, and he in turn died in 1123, leaving no brothers and no male heirs, only the descendant of a common great grandfather, known as Conrad the Great of Wettin. Yet the emperor was unable to oust this distant connection of the late margrave. It was in vain that he appointed two of his dependents—one to Meissen and Lausitz, the other to Thuringia. The whole of Saxony rose in arms under Duke Lothair and Albert of Ballenstadt; the Saxon chroniclers shrieked at the violation of hereditary right, and long afterwards the *Sachenspiegel* stated the doctrine that in the case of the failure of direct heirs, an inheritance went to the man who stood nearest to a common ancestor. The Duke of Saxony solemnly confirmed to Conrad the March of Meissen, and the

emperor and his candidate were ultimately forced to acquiesce in an injury which they would not either cure or avenge.

This tendency can be illustrated from another quarter. The prime need of German society all through the Middle Ages was protection. Your property, let us say, is mainly at Bonn, but you hold a few stray acres near Münster. How are you to see that your villeins are not slain, your barns plundered, your farm buildings burnt by the noble whose castle frowns upon your lands? The simplest way is to pay blackmail to the bandit, to choose him to be the advocate or defender of those acres, to give him a vested interest in your corn, your pasture, your pigs, your cattle, in the litigation of your tenants, in the yield of your fisheries. If you are rich, if for instance you are a bishop, administering the property of a see, your lands will probably be strewn in small defenceless strips or manors over many hundreds of miles, for your see does not refuse its legacies, and benefactors after all can only give what they possess. In such a case you will require the help of a very powerful bandit; you will enlist the services of the greatest noble family which you can find, and since the crown cannot provide this indispensable commodity of protection, you must find it where you may. Again, the ecclesiastics may not do criminal justice, and it is theoretically held that they may not lead their men into battle. "Nemo militans Deo implicat se saecularibus negotiis." The advocate is the lay representative, the defender, the patron of an ecclesiastical foundation. He led its men to the host, he conducted its secular jurisdiction, and annexed a third part of the profit thereof. He had the right of being entertained for a certain number of days at the cost of the see, or else he received a tribute in

kind or in coin in lieu thereof. The villeins of the bishop or abbot paid him dues and worked for certain days upon his lands, or he would receive a round annual sum in compensation for these claims. In places, the best beast, dues on sales and purchases and marriages, and on the minting of money went to the advocate. The advocate held numerous benefices of the see; in time all secular jurisdictions came to be merged in his jurisdiction, in the *Vogtding*, the court of the efficacious protector of the land. Hence the absorption of advocacies was one of the regular devices by which a territorial power was built up. It was one of the most important constituents in the power of the House of Welf, of Hohenstauffen and of Zähringen, and it has been pointed out by Waitz that the more influential a noble family becomes in Germany the more advocacies it annexes. Thus the Dukes of Saxony were advocates in Quedlinburg, Walbeck, Schöningen, Huisberg; the Counts of Nordheim in Corvei, Gandersheim, Flachtort, Helmershausen; while all the margraves seem to have obtained the advocacies in their respective marches. Lewis, the ancestor of the Landgraves of Thuringia, is said to have owed his rise to the fact that he was vicegerent of the See of Mainz in that region, and that he held several rich benefices of the archbishop; and the Bavarian advocacies were most important constituents in the wealth of the House of Wittelsbach.

Now, in Carolingian times the advocate was generally appointed with the consent of the king and his officials, but by degrees the bishops obtained the right of appointing their own advocates according to their own pleasure. It was often a right expressly granted with an immunity, as for instance in the Charter of Otto I. for Minden, of Otto II. for Magdeburg and Strassburg, of Otto III.

for Worms and Verden and Paderborn, of Conrad II. for Bamberg. In the time of Henry II. there was not a bishop in all Germany who had not the right of appointing his own advocate. The emancipation of the monasteries was not so rapid, and the abbots appear for some time to have required royal confirmation for their nominees. But here too a large number of abbeys received from the emperor the right of electing their advocate, while others were compelled to accept an advocate of their bishop, and the right of appointment would of course belong to all princes or prelates who had founded monasteries or churches, or who had acquired them by gift or purchase, and would, like any other piece of property, be the subject of bequest. Indeed, in spite of the fact that Gregory VII. declared that hereditary advocacies were against the canons, the advocacy did generally become hereditary in a noble family. It was sometimes bound up with the possession of a castle or family seat, and became a lucrative heritable appendage to the fortunes of a noble, who would get the functions discharged by a subordinate, and would thereby obtain compensation for the losses which the ecclesiastical immunity inflicted on him. It was sometimes—despite many efforts to prevent this—treated as a fief. It would be held by females or by children, and it was one of the regular means by which the nobility rewarded the services of their knights.

The emperors, who could not protect, saw with increasing clearness the profitable nature of the protector's business. They began to enter into the lists against the nobles of Germany for these lucrative situations, the Saxons sparingly, the Franconians more frequently, the Hohenstauffen unblushingly and systematically. "Advocatia quae ad regnum pertinet," a phrase first used

under Barbarossa, marks what seems a real development of fiscal policy. Why should not Barbarossa and his sons set themselves to buy up all the advocacies of Germany with the political and fiscal and jurisdictional rights which had by custom become engrained in them? That would have been almost equivalent to the repurchase of an empire. Could all the capitulations, all the alienations and concessions, all the administrative and judicial failures, all the no-government of centuries have been thus repaired by a connected system of inconspicuous purchases? Perhaps, if only the purchases could be utilized, if the imperial advocate could find officers to give adequate protection, to do satisfactory justice, to refrain from abusing fiscal opportunities. But it was just at this time that the imperial advocate began to become an absentee, whose main interests were Italian; while the double election of 1198 opened up a period of discord in Germany, during which justice and order said a long good-bye. The advocacy, which might have been recaptured by the empire, went to swell the resources of the princes.[1]

It remains to consider the highest of all the Carolingian offices, the duchy. Now if the monarchy of the Saxon and Franconian emperors had an internal policy, that internal policy was the control of the dukedoms. To keep the dukedom an office, an indivisible office, a life office, an office the patronage of which lay in the crown, this was the motive of many struggles. Many, too, were the methods adopted to attain this end. The first was to attach one or other of the dukedoms to the monarchy. Thus Otto I. begins by making his son and then his brother Duke of Bavaria;

[1] For the advocate, cf. Waitz, *D. V.G.*, vii., p. 314 ff., and Lamprecht, *Deutsches Wirthschaftsleben*, i., p. 1062-1135.

thus Conrad II. gives Bavaria and Swabia to his son Henry; thus Henry III. for a time holds Bavaria himself, then gives it to his three-year-old son; thus Lothair gives Saxony and Bavaria to his son-in-law; thus the Hohenstauffen keep Swabia for themselves. Then a second method was by frequently changing the ducal line to check the growth of the hereditary tendency. It was a policy pursued with much apparent success in Bavaria, where during two hundred and seventy years no less than eleven dynasties of dukes succeeded one another. But it was never attempted in Saxony until the time of Henry IV.,[1] who seems to have aimed at the overthrow of the Billunger House, and it was never effectively carried out until a coalition of Saxon nobles enabled Frederick I. to overthrow Henry the Lion. To balance the power of the dukes by appointing palsgraves, or by carving from the duchies independent marches or ecclesiastical immunities, to emphasize the official character of the dukes by requiring them to do menial service at coronations and on other solemn occasions—these were other devices to obtain the same object.

But the success of these measures was more apparent than real. The hereditary tendency was never entirely overcome even in Bavaria. Thus it is noticeable that both Otto I.'s son Liudolf and his brother Henry have to marry Bavarians, and that no non-Bavarian dynasty can for long maintain itself. An examination of the fortunes of Rudolph of Reinfelden, of the Hohenstauffen,

[1] The minorities of Otto III. and Henry IV., and the long rule of Duke Bernhard II. [1011-1059] seem to have secured the Billunger dynasty. Possibly also the fact that their duchy was in reality merely in its official aspect the command of the marches against the Danes and Northern Slaves, and not the old tribal duchy [Weiland, *Entwickelung des Sachischen Herzogthums*, p. 1].

and of Lothair of Supplinberg illustrates the importance attached to the hereditary principle, for all these men rose in virtue of successful marriages. It is noticeable also, that even when under the Franconian dynasty a duchy has been forfeited, the holder still continues to call himself a duke, and that the Bavarian and Lotharingian palsgraves, who seem to have been appointed originally to balance the dukes in their respective districts, are able to transmit their office to their descendants from the very first. Nothing, indeed, is so remarkable a feature in German history as the long pedigrees of its noble families, and when we recollect that primogeniture was unknown in Germany till the sixteenth century, and that many of these families had been deeply involved in rebellion, the fact becomes all the more amazing.[1] It can only be explained by the extreme feebleness of the monarchy, which was incapable either of permanently depressing its foes or of permanently exalting its friends, and by the extremely slow economic development of the country.

We have seen how the hereditary principle triumphs all along the line. It has captured the county, the margraviate, the advocateship. It lays hold of the duchy. The principle thrives and develops during the Wars of the Investitures, and at the end of them it has become irresistible, changing the face of Germany by its victory. For the War of the Investitures, if we may call a long discontinuous series of ineffectual fighting a war, has many aspects. It is a struggle between the Frankish monarchy and the Saxon race; it is a contest

[1] Riezler, *Gesch. Baierns*, i., p. 582, "Since the fall of the Agilofings the kings never again succeeded in permanently weakening the power of an influential Bavarian house. Luitpoldings and Welfs, younger Babenbergs and Aribones all at times had revolted against the monarchy, all had been put to the ban, or imprisoned, and all had risen again."

between the Holy Roman Emperor and the Pope; it is a series of seemingly trivial but really highly important successional disputes between the monarchy and the nobility. There is indeed an inner connection between these three aspects of the war. The leaders of the Saxon revolt are Otto of Nordheim and Magnus Billunger, the first of whom has been deprived of his Duchy of Bavaria, the second of whom is threatened with the loss of his Duchy of Saxony, so that, intertwined with the grievances of the Saxon peasantry and the assertive spirit of independence of the Saxon race, we find the grievances of the nobility, who are fighting for the hereditary principle. So too, if the war with the Papacy is under one aspect a contest involving the purity of ecclesiastical elections and of ecclesiastical morals, it is in another aspect a contest for the political control of the clergy and the political influence flowing from the exercise of ecclesiastical patronage, while the maintenance of the hereditary principle, which is the key to the wars of Henry V.'s reign, involves the independence of the races and the victory of the Papacy.

Now if we examine the War of the Investitures, we find that it is a period during which the two great southern duchies assume a much more independent position than they had hitherto been able to assume, under two families, the Welfs and the Stauffers, which rise to power, the one mainly in antagonism to, and the other wholly in reliance on, the Franconian House. These families too assume a far greater importance in imperial affairs than had hitherto belonged to the holders of the duchies. Frederick of Stauffen marries Agnes, the daughter of Henry IV., and after almost twenty years of unceasing struggle obtains a firm foothold in the

Swabian duchy, which remains in his family until the death of Conrad IV. That is to say, the Wars of the Investitures give to Swabia a ducal family, which is able to transmit the title for more than a century and a half. So, again, Welf I. of Bavaria maintains himself in his duchy, despite everything which Henry can do to oust him, eventually extorts the imperial recognition of his claims, and builds up a territorial house, which bids fair to overshadow the monarchy itself. During the later years of Henry IV., the Bavarian duchy is a kind of *imperium in imperio*, and men spoke of a Bavarian kingdom, as in the days of Duke Arnulf. The Bavarian duke reduces most of the chief laymen, even margraves and palsgraves, to a state of vassalage. Bavarian nobles absent themselves from imperial diets, and the business done in their absence has to be confirmed at Regensburg, or elsewhere at a Bavarian diet. In those days the emperor was powerless to force law and order; the task fell to the Dukes of Swabia and Bavaria. It is they who, in 1093 and 1094, introduce and enforce a Land-peace from the borders of Alsace to the borders of Hungary, and discharge the functions which Henry IV., the anathema of that priest-ridden land, could not, even if he had willed, have performed.[1] Nor could the Salian monarchy ever recover influence in Bavaria. Although Henry V. was brought to the throne by Bavarian influence, although he was supported against the Papacy by nearly all the Bavarian bishops, and had, in Dietpold of Nordgau, Berengar of Salzbach, and Otto of Wittelsbach, three influential and devoted adherents, he was wise enough to realize that he must not interfere in Bavarian affairs, and that he must rely upon keeping

[1] *Bernoldi Ann. ad ann.* 1093, 1094; Giesebrecht, *K.Z.*, iii., p. 653-689; cf. supra, p. 202.

up a good understanding with the Welfs.[1] Welf II., it is true, has no children, but so firmly is the hereditary character of the duchy now recognized that his brother, Henry the Black, bears the ducal title, at least in Italy, thirteen years before Welf II. dies.[2] With their ancient possessions in Swabia, and with their hereditary, practically independent South-German duchy in Bavaria, the Welf family begins to assume an importance in German politics such as had not hitherto belonged to any but the family of the king. In the early days of Henry IV.'s reign, Welf I. had been one of the most consistent and dangerous adversaries of the Salian House. He had been in his own way an exponent of Gregorian ideas, a champion of the Upper German Church Party; but his two sons made their peace with the Salian monarchy, and with the Swabian family of the Stauffen which had grown up under the shadow of the last two Salian kings.

The peace was cemented by many bonds, for there was hardly a powerful South-German family which was not matrimonially connected with the Welfs. But then came two marriage alliances which completely changed the current of Welfic history. Just as the Welfic House seemed to be settling down into a South-German power, closely allied with its Swabian neighbours, the Hohenstauffen, it becomes diverted to the North, and to an alliance which was bound to bring it into sharp antagonism with the Salian-Hohenstauffen connection. Henry the Black married Wulfhilde, the daughter of Duke Magnus of Saxony; and when in 1125 Lothair of

[1] Riezler thinks that Welf's acquiescence in Henry's annexation of the Matildine heritage in 1115 was purchased by the imperial recognition of Welf's brother's right to succeed in the duchy (Riezler, i., p. 578).

[2] Riezler, i., p. 484; Welf II. died 1120.

Supplinberg was bidding for the support of the Bavarian duke in his candidature for the German crown, he offered him a bribe which Henry the Black was unable to refuse. It was the hand of Lothair's only child Gertrude, the richest heiress of Saxony, for Henry's second son, known as Henry the Proud. These two marriages entirely altered the position of the Welfs. They made them a great northern family; they made them the inheritors of the Saxon opposition to the Salian house; they made them so powerful, that all the elements of opposition to the crown naturally gravitated around them. And just as these two marriages made the Welfic family the heirs of Magnus Billunger and of Otto of Nordheim, so did the marriage of Agnes, daughter of Henry IV., with Frederick of Stauffen, make the Stauffen the heirs of the Salian family. When Henry V. died without children in 1125, Frederick II., Duke of Swabia, claimed the crown as his nearest relation, and, as heir to the emperor, seized the property which the Salians had obtained by confiscation or exchange. It became from that moment clear that the old antagonism between the Saxon race and the Salian monarchy would live on in a transmuted form. It would assume the shape of a contest between two families, both widely connected and endowed with vast territorial and political powers, the families of the Hohenstauffen and of the Welfs. And in assuming this shape the struggle gradually alters its character, or rather it divests itself of those peculiarly racial and religious elements which had been present in such large proportions during the troublous reign of Henry IV., and becomes, so to speak, an amplified continuation of those disputes about offices and inheritances, which became so important towards the close of the War of

the Investitures, during the reign of Henry V. Let us consider for a moment this reign of Henry V., outwardly so dull and wearisome, in reality so crucial. It is the reign of the Treaty of Worms and of the Battle of Welfesholze, of the peace made between the Monarchy and the Church, of the final exclusion of the Salians from Saxony. But the most striking feature of the reign is really to be found in a series of events, which are seemingly more abstruse and paltry, in a series of struggles between the king and the nobility about the succession to fiefs and offices. Thus the first Saxon war which results in the crushing defeat of Welfesholze arises from the fact that the king claimed the inheritance of Udalric of Weimar without taking into account the pretensions of a collateral. And the second Saxon war is due to the fact that when the Marches of Meissen and Lausitz become vacant, the king refuses to recognize the claims of a man who was no nearer to the last margrave than descent from a common great-grandfather could make him. During the Wars of the Investitures it happened that a number of important families died out in North Germany—the Billungers, the Braunschweigers, the Nordheimers, the Weimars for instance—and that several important new families—the Ballenstadters, the Winzenburgers, the Wettins, the Wittelsbachs, the younger line of Welfs and the Stauffers—came to the front. The monarchy was therefore tempted on the first opportunity that offered, to dispose freely of the offices of margrave or of duke, and to assert its influence by balancing the claims of one family against another. The internal history of Germany thus becomes a series of contests over inheritances. Under Lothair the main question at issue is the right of the monarchy to prevent the Hohenstauffen family from

enjoying the heritage left them by Henry V., and obtained by that monarch through the exercise of imperial functions. Under Conrad III. the main question at issue is whether the monarchy is still to be allowed to dispose freely of the duchies, for we find Conrad asserting the principle that two duchies cannot be lodged in the same hand, depriving Henry the Proud of the Duchy of Saxony and appointing Albert of Ballenstadt in his place. Under Frederick I. these questions are set at rest for a time, for the emperor begins his reign by conceding all that the Welf family and all that the nobles could demand. He allows Henry the Lion to keep the two duchies of Saxony and Bavaria; he makes the Margraviate of Austria an independent duchy; he diverts, employs, amuses his nobility. He does not attempt to infringe the principle of heredity or to restore Carolingian officialism. He opens a large theatre for military enterprise in Italy. But all the while the Hohenstauffen are confronted with the power of the Welf family, which is now playing an illustrious rôle in North Germany, but playing it with too much force to be pleasant to the counts and margraves and bishops of Saxony. And though a coalition of these nobles enables Frederick to deprive the head of the Welf House of his Saxon and Bavarian duchies, yet the family still remains in possession of its hereditary property. And when, on the death of Henry VI. in 1198, his brother Philip of Swabia is elected King of the Germans, this Welfic family provides a counter candidate in the person of Otto of Poitou, the son of Henry the Lion, the favourite nephew of Richard I., the wealthy but almost landless candidate of the North-German party and of Adolph of Cologne, the representative of the commercial interests which bind the Rhenish

cities to London, the representative of the Papacy of Innocent III. against the Italian schemes of the Hohenstauffen dynasty. Thus the old quarrel between Henry IV. and the Saxons broadened out into the dynastic struggle between the Welf and the Wibelin, which was but one side of the larger contest between the Papacy and the Hohenstauffen monarchy, and which did much to break up the fictitious unity of the Medieval Empire.

This contest between Welfs and Wibelins maintained a significance in Italy for some two centuries after Otto IV., the last emperor of the Welfic house, was defeated at Bouvines. What that significance might be varied with time and place. Broadly speaking the Welfs were papalist, the Wibelins imperialist; the Wibelins were the party who desired a strong government; the Welfs the party who preferred particularism; the Wibelins would bring in the German; the Welfs would cry Italy for the Italians. The larger issues, however, rapidly lost themselves in the feuds of factions and of towns, when the dynasty of the Hohenstauffen passed away, and with it the continuous intervention of the emperors in Italian affairs. But in Germany the contest between the great family groups had a shorter and a simpler history. It is indeed tinged—what medieval contest was not?—with the hues of religious discord. Henry the Lion is the heir of Lothair, and Lothair was the friend of the Papacy and of St. Bernard, one of the knights of St. Peter who fought the battle of Hildebrand against Henry IV. Otto IV. was the son of Henry the Lion, and he was chosen by the party of Innocent III. to do battle against the dynasty, who would destroy the territorial independence or the papal chair. But if there are religious hues on the struggle, the hues are faint and evanescent. Under Conrad III. the struggle between

the two connections is but a series of dislocated feuds; in the north a contest for the Saxon duchy between the Welfs and Albert the Bear; in Bavaria a struggle between the Welfs and the counts of Ballei, while the famous war-cry, "Hi Welfen, Hi Wibelinen" is first recorded to have been raised on the occasion of Conrad's siege of Weinsberg, a robber fastness in Franconia in 1140. In all these contests there is no question of religion. The papal legate is in Conrad's camp at the siege of Weinsberg, and Conrad, like an obedient son of the Church, goes crusading with the chivalry of Germany at his back. So too Henry the Lion fights side by side with Barbarossa in Italy against Alexander III. until 1176, the year of Legnano. If Otto IV. is chosen to contest the throne against Philip of Swabia, it is largely because he is supposed to be wealthy, known to be destitute of territorial influence, because he is an adventurer who will lavish concessions to towns, bishops, and nobles, who will have no imperial conscience, who will be free with his money. Many of these suppositions were falsified in the event, for with the imperial office Otto, like Lothair before him, developed an imperial conscience of such alarming vitality as to throw the Pope back upon Frederick II. But the main point is that he was put forward rather as the champion of German particularism than as the champion of the most advanced ecclesiastical ideas of his own time. The Welf cause in the reign of Frederick II. was what the cause of Henry the Lion was under Conrad III. and the cause of Lothair under Henry V., the cause of German particularism against the empire, and in this sense the cause may be said to have survived the defeat of Bouvines and to have dominated German history until our own time.

There is a famous passage in the *Germania* of

Tacitus descriptive of the war-band or military company with which the German prince is surrounded, and which follows him to war. The members of this war-band sleep in the lord's house, dine at his table, receive from him their military equipment, think it a point of honour to defend his life at the cost of their own. But the tie of the companion to the lord is not always of the strictest, and he is free to quit his lord's company, if he can find more continuous or more brilliant military employment with another leader.

Wherever the Germans settle within the limits of the Roman Empire we find traces of this peculiar association, an association smaller, more compact, more energetic than that of the tribe, but liable to many transformations, as nomad habits give place to settled life, war to peace, anarchy to government. The Ostrogoths have their *saiones*, the Visigoths their *bucellarii*, the Angles and the Saxons their *gesiths*, the Franks their *antrustions*, and early medieval literature from the *Heliand* and Beowulf to the Epics of the Arthurian and Carolingian cycle, assumes this war company as the basis of the ornamental society which it depicts, and as one of the two chief sources of its moral ideas. But as settled agrarian habits develop, the character of the war-band changes. The tie which bound the man to his lord ceases to be personal and becomes territorial. The companion receives land in exchange for his services, or on condition of performing them. The members of the warrior household become landed proprietors, serving their lord under stated conditions for stated periods, in accordance with the terms of some contract which may be written. In a country like the England of the later Anglo-Saxon kings, which possesses a central government, and a settled land-system which exacts stupendous

sums from its inhabitants by way of taxation, and thereby creates the necessity of some system of land valuation, this military service rapidly becomes inherent in the soil itself. An area of five hides of land is bound to supply a warrior, and the obligation is not affected by any change of fortune which may pass over the area. It may be sold over and over again in the market; it may be subdivided; it may pass from noble into non-noble hands; it may be mortgaged; but it will still be obliged to provide its warrior, unless the original proprietor of the land shall have chosen to order otherwise. Then if it becomes the theory that all land is held of the king immediately or mediately, this military service which is inherent in the land will be ultimately due to the land's supreme owner. It does not matter what the precise source of that military service may have been. In one place the military representative of, let us say, a five-hide unit may be the beneficiary of some lord, the companion who has received land that he may serve his lord in war, and acquit some part of his lord's military obligations towards the state. In another place he may represent the quota supplied by the freemen of his district to the fund at the rate of one man per five hides in virtue of the primitive obligations lying upon all freemen to fight in the host. But long before the Norman Conquest these two sources of military service have become fused and indistinguishable in England. The obligation of providing contingents of freemen has been shifted on to the lords by the state, has been shifted on to the land by the lords. The old war-band so vividly depicted in Beowulf has become a thing of the past, as its members take to agriculture, and as the power of the monarchy increases. When the Normans come to England they

will find almost the whole feudal structure complete. It will be easy for them to say that all land is held from the king, and that all military service is due to him.[1]

Germany presents a signal contrast. Here there is no Danegeld, no monarchy, even of the strength of the House of Wessex, no Norman Conquest, no completed feudal structure, no developed sense of the state. During the anarchy caused by the break-down of the Carolingian system by the invasions of the Hungarian and the Northman, society reverts to the ancient ways described by Tacitus. From within the tribe which is loose, slow to act, ineffective, the individual leader collects a band of warriors, whom he encourages with the hope of spoil, rewards with land or with money, binds to his person with solemn oaths. With such a band around him, collected no matter whence, an Arnulf will win victories over the Magyars, and for himself the title of Duke of the Bavarians; then established in his duchy, he will treat as an independent sovereign with Henry the Fowler, the elected king of the Germans, will wring from him the right of ecclesiastical investiture, which properly only belongs to kings, and will bequeath to his descendants an amount of influence and prestige with which the monarchy of Otto I. will have seriously to reckon. Nor are the materials for such a success difficult to obtain. Burchard, who obtains the Duchy of Swabia in the days of the Fowler, arouses opposition by his severity. A party is formed against him, and he must take measures for his defence. He has only to be liberal with his land and with the land of the Church, and he finds himself at the head of a large body of fighting men, ready to do his work. Etheler of

[1] Oman, *A History of the Art of War*, pp. 108-13, 357-69.

Dithmarsch, suborned by Danish money, collects all the fighting men of Holsatia, joins the Danish king, and leads his force against Count Adolf of Schauenberg. Whoever wished to become Etheler's man came to him and received a breastplate, a shield, and a horse, and these attractions were quite sufficient to spread sedition through the land. You have only to be affable and generous, and adventurers will flock to your banner. It is necessary indeed to secure their fidelity by an oath at the beginning of a campaign or of a battle; otherwise the whole company may desert you in the hopes of obtaining larger profits elsewhere. Thus the companions of Duke Henry of Bavaria desert to Liudolf, the rebel son of Otto I., besiege Regensburg the capital of their former leader, and pillage his property. But even an oath is not always an effective security against desertion. The chief men of Bavaria had sworn an oath to Henry their duke that they would choose no other leader for three years. During Henry's absence from Bavaria, the king comes into the country, summons them to Regensburg, and by dint of threats and promises detaches them from their compact, and annexes them to his own special service. The Comitatus, in fact, is not always composed of willing members. Count Gerhard of Alsace captures a Burgundian priest in battle, and will not release him until he has sworn an oath that he will always help him and be his devoted knight. The Saxon Duke Bernhard has the good fortune to capture a Slavonic Prince Gottschalk, who had gathered round him a band of Slavonic bandits, and exterminated all the Christians whom he could find in Nordalbingia. At first the captive is cast into chains, but then the duke reflects that here is a bold and active man-at-arms,

who may be useful in after-times. He strikes a compact with him, gives him an ample present, and lets him go, for barbarians have short memories, and their anger passes away like a smart April shower. In most cases the Comitatus is little better than a band of robbers. Yet the institution flourishes in Germany under strong kings as well as under weak ones, under Henry III. and Frederick Barbarossa as well as under Henry IV. and Philip of Swabia. Theoretically, the knight serving in the company of a rebellious lord might hold that he could not be obliged to take arms against the king, and there is a famous story told by Wipo to illustrate this point. Duke Ernest of Swabia had taken up arms against Conrad II. Trusting in the strength of his military following, he consented to come to an imperial diet at Ulm in the hopes of being able to extract such terms as he pleased from the emperor. Then he summoned his men around him, reminded them of the oath which they had solemnly sworn, exhorted them not to desert him lest they should lose their honour, reminded them that the Alamanni had always been conspicuous for loyalty towards their masters, promised them rewards for themselves, glory and honour for their posterity. Two counts, Frederick and Anselm, replied on behalf of the whole company to this exhortation. They did not deny that they had promised fealty to Ernest against all men except the king; and if they had been the slaves of the king and the emperor, and had been lawfully sold to the duke, then they would be bound inseparably to his person. But as they were freemen, and the king and emperor was the supreme defender of liberty in the land, they could not desert him without losing their liberty. It may have been

convenient upon occasions to urge a theory which German practice never scrupled, if convenient, to violate. When Otto I. captured part of a rebel company, they refused to give up their associates on the ground of the oaths which they had mutually sworn to one another. At the beginning of the thirteenth century, Otto of Meran, owing to the good offices of Emperor Philip, married Beatrice, heiress of the Countess of Burgundy. Stephen II., who represented the younger Burgundian line, invaded his territory, and at last (October 18, 1211) a peace was made between the two belligerents, of which the following was a clause: "And if it should by chance happen that the emperor should accuse Stephen of invading my (Otto's) land, or charge him with the damages and forfeitures of which I have acquitted him, I, Otto, will make no peace with the emperor without the consent and will of you, Count Stephen."[1] There is not a single reign during the whole period under consideration which passes without a rising of some portion of the nobility in Germany, or without abundant evidence of private war.

Nor is it only the great secular nobles, the Dukes of Bavaria and Swabia, the "principes," who surround themselves with military attendants, and can take the field with an armed following. A simple freeman in the Hassegau has a hundred armed and breast-plated knights at his service. Two sons of a somewhat inconspicuous Saxon count can raise a large army to fight the king's servants in the Saxon wars. The ecclesiastical proprietors, the bishops and abbots eagerly follow suit, and give their lands away to be held by knight's service. An armed following accompanies the prelate

[1] *Mémoires et documents inédits pour servir à l'histoire de la Franche Comté*, iii., pp. 498-500.

of the Church as he goes on imperial expeditions into Italy or into Bohemia, or as he merely attends a royal diet. Sometimes the custom will give rise to a battle in the royal presence even in a church itself. While Henry IV. and his bishops are at vespers in the church at Goslar a picked band of men-at-arms, led by one of the counts of the Bishop of Hildesheim, rush from behind the altar where they have been carefully placed, and drive the men of the Abbot of Fulda from the church with fists and sticks. The men of Fulda return, draw their swords, and a battle begins. The Bishop of Hildesheim from a place of vantage cheers on his men. The king, after vainly attempting to appease the tumult, with difficulty escapes through the contending crowd into the palace. Many are wounded, some are slain, among them the standard-bearer of the Monastery of Fulda and the favourite knight of Count Ekbert, who leads the Hildesheimers. And the whole quarrel arises from a difference as to which of the two prelates should sit next to the Archbishop of Mainz at a meeting of bishops held in the diocese of Hildesheim.

The scene is nearly repeated at Barbarossa's famous court at Mainz in 1184. Kings, dukes, and marquises are serving the emperor in menial capacities at table. The wine is as plentiful as the wine at the banquet of Ahasuerus, and two large houses stocked from floor to ceiling with cocks and hens excite the rude wonder of the populace. On Easter Sunday the emperor goes to hear mass in the cathedral. No sooner have the prelates and princes taken their seats when the Abbot of Fulda rises and demands to be heard. He complains that the Archbishop of Cologne has deprived him of his place of honour on the emperor's left, and Frederick

turned round to the archbishop, saying, "Do you hear what the abbot has said? We pray you not to disturb our hilarity and to concede him his place." The archbishop was prepared for the point, and had brought four thousand armed men to Mainz that he might the more effectually argue it. He replied to the emperor as follows: "My lord, let it be as your serenity may choose to direct, let the lord abbot hold the place which he desires. But I, saving your grace, will go retire to my hospice." And as he prepared to go, Conrad II., Count Palatine of the Rhine, rose from his place by the emperor's side, saying, "Lord, I am the man of my Lord of Cologne, it is right that I should follow him whithersoever he should go." Then the Count of Nassau rose and said, "And I, by your grace, will follow my Lord Archbishop." And the Duke of Brabant and many other powerful nobles followed suit. And Lewis of Thuringia, who was the abbot's man, said to the Count of Nassau, "You have thoroughly deserved your benefice this day." And he replied, "I have deserved it, and I will deserve it, if there be need to-day." Then, as the archbishop prepared to move away, the young king leapt from his seat, clung round his neck, and exhorted him to stay, while the emperor offered to swear that he had not acted in malice, and ordered the abbot to give place to the archbishop. It was only by such humiliations that the harmony of the meeting was restored.[1]

Such events are not rare in medieval German history. Nobles and prelates dispose of forces, which are strong enough to set the king at defiance, and they consider themselves free to use them as they choose. The armed following of an Albert the Bear or a Henry the Lion, of

[1] Arnold, *Chron.*, iii. 8.

a Rainald Archbishop of Cologne,[1] might at any moment suffice to reduce the monarchy to the sorest straits. When in 1075 King Henry IV. tries to collect an armed following against the Saxons at Strassburg, there is no device to which he will not be condemned to descend. He promises to carve out estates in fee simple from the conquered Saxon and Thuringian lands; he accepts offers of help from whatever quarter, no matter how poor or how ignoble. An oath is taken on both sides, and the king's company is made up for the campaign. If it is difficult for him to rally his army, it is still more difficult to keep it together. After the battle of Homburg, which has been a royal victory though a costly one, the South German dukes, disgusted at the losses they have suffered, swear that they will take no further part in the war and quit the royal camp with their respective companies.

Nor does the prevailing sentiment, as it is reflected even in monkish annals, generally favourable to the empire, condemn the noble who rebels against his sovereign. Widukind was a Saxon clerk, who wrote a history of two Saxon kings, Henry the Fowler and Otto I., and dedicated it to the daughter of King Otto; but his highest flight of eloquence is reserved for the career of Wichmann, who for nineteen years stirred up rebellion against the emperor, who even allied himself with the Slaves against the Germans, and who died fighting bravely against his German sovereign. The chronicles, the sagas, and the extraordinary leniency of the penalties meted out by the emperors to open rebellion testify to the state of public opinion upon this point. The German nobility possessed in fact a perfect

[1] Albert the Bear takes the field in 1132 with 1500 knights: Henry the Lion with 5000.

genius for disobedience and treachery. They would ally themselves with Bohemians and Slaves, with Danes and Italians, as it might serve their turn. Restrained by no considerations of patriotism, softened by no tincture of culture, swayed by rudimentary passions, simple, violent, and gross, they would neglect all the higher calls of citizenship to serve their greedy ends. Only occasionally a great cause swayed them; and, fired with the pride of race or bowed to the mastery of a gorgeous dream, they spent their lives nobly in the arid highlands of Asia Minor, or in the malarious paradise of Italy. Yet the thickest strand of their existence was woven of cruelty, and perfidy and vice, and when the mailed heroes of Germany rode off to the Crusade the monk and the peasant breathed a sigh of relief, and tranquillity returned to the land.[1]

[1] The higher side of German chivalry is illustrated in the following passage upon the death of Henry VI.: "Cujus mors genti Teutonicorum omnibusque Germanie populis lamentabilis sit in eternum quia aliarum terrarum divitiis eos claros reddidit, terroremque eorum omnibus in circuitu nationibus per virtutem bellicam incussit eosque prestantiores aliis gentibus nimirum ostendit futuros" (SS. xx., p. 328).

CHRONOLOGICAL TABLE OF EMPERORS AND POPES.

FROM CONSTANTINE THE GREAT TO RUDOLPH I. OF HAPSBURG.

A.D.	POPES.	A.D.	EMPERORS.
307	Marcellus I.		
		308	Maximin.
		309	Constantine, Galerius, Licinius, Maximin, Maxentius, Maximian.
310	Eusebius.		
310	Melchiades.		
314	Sylvester I.		
		323	Constantine (the Great).
336	Marcus I.		
337	Julius I.	337	Constantine II., Constantius II., Constans.
		337	Maxentius.
352	Liberius I.		
		353	Constantius alone.
355	Felix II. (Antipope).		
358	Liberius (returned).		
		361	Julian.
		363	Jovian.
		364	Valens, Valentinian I.
366	Damasus I.		
367	Ursinus (Antipope).	367	Gratian, Valentinian I.
		375	Gratian, Valentinian I.
		379	Theodosius.
384	Siricius.		
		395	Arcadius (E.). Honorius (W.).
399	Anastasius I.		
402	Innocent I.		
		408	Theodosius II. (E.).
417	Zosimus.		
418	Boniface I.		

A.D.	POPES.	A.D.	EMPERORS.
418	Eulalius (Antipope).		
422	Celestine I.		
		424	Valentinian III. (W.).
432	Sixtus III.		
440	Leo I. (the Great).		
		450	Marcian (E.).
		455	Maximus Avitus (W.).
		455	Majorian (W.).
		457	Leo I. (E.).
461	Hilarius.	461	Severus (W.).
		465	Vacancy (W.).
		467	Anthemius (W.).
468	Simplicius.		
		472	Olybrius (W.).
		473	Glycerius (W.).
		474	Julius Nepos (W.).
		474	Leo II., Zeno Basiliscus (E.).
		475	Romulus Augustulus (W.).
		476	End of the Western line. Henceforth till 800 the Emperors rule at Constantinople.
483	Felix III.		
		491	Anastasius I.
492	Gelasius I.		
496	Anastasius II.		
498	Symmachus.		
498	Laurentius (Antipope).		
514	Hormisdas.		
		518	Justin I.
523	John I.		
526	Felix IV.		
		527	Justinian.
530	Boniface II.		
530	Dioscorus (Antipope).		
533	John II.		
535	Agapetus I.		
536	Silverius.		
537	Vigilius.		
555	Pelagius I.		
560	John III.		
		565	Justin II.
574	Benedict I.		
578	Pelagius II.	578	Tiberius II.
		582	Maurice.
590	Gregory I. (the Great).		
		602	Phocas.
604	Sabinianus.		
607	Boniface III.		

A.D.	POPES.	A.D.	EMPERORS.
608	Boniface IV.		
		610	Heraclius.
615	Deusdedit.		
619	Boniface V.		
625	Honorius I.		
638	Severinus.		
640	John IV.		
		641	Constantine III., Heracleonas, Constans II.
642	Theodorus I.		
649	Martin I.		
654	Eugenius I.		
657	Vitalianus.		
		668	Constantine IV.
672	Adeodatus.		
676	Domnus or Donus I.		
678	Agatho.		
682	Leo II.		
684	Benedict II.		
685	John V.	685	Justinian II.
686	Conon.		
687	Sergius I.		
687	Pascal (Antipope).		
687	Theodorus (Antipope).		
		694	Leontius.
		697	Tiberius IV.
701	John VI.		
705	John VII.	705	Justinian II. (restored).
708	Sisinnius.		
708	Constantine I.		
		711	Philippicus Bardanes.
		713	Anastasius II.
715	Gregory II.		
		716	Theodosius III.
		718	Leo III. (the Isaurian).
731	Gregory III.		
741	Zacharias.	741	Constantine V. (Copronymus).
752	Stephen II.		
757	Paul I.		
767	Constantine (Antipope).		
768	Stephen III.		
772	Hadrian I.		
		775	Leo IV.
		780	Constantine VI.
795	Leo III.		
		797	Deposition of Constantine VI. by Irene.
		800	Charles the Great revives Western Empire.

A.D.	POPES.	A.D.	EMPERORS.
		814	Lewis I. (the Pious).
816	Stephen IV.		
817	Pascal I.		
824	Eugenius II.		
827	Valentinus.		
827	Gregory IV.		
		840	Lothair I.
844	Sergius II.		
847	Leo IV.		
855	Benedict III.	855	Lewis II. (Italy).
855	Anastasius (Antipope).		
858	Nicholas I.		
867	Hadrian II.		
872	John VIII.		
		875	Charles III. (the Bald).
		881	Charles IV. (the Fat).
882	Martin II.		
884	Hadrian III.		
885	Stephen V.		
891	Formosus.	891	Guido (Italy).
		894	Lambert (Italy).
896	Boniface VI.	896	Arnulf (East Frankish).
896	Stephen VI.		
897	Romanus.		
897	Theodore II.		
898	John IX.		
900	Benedict IV.		
903	Leo V.		
903	Christopher.		
904	Sergius III.		
911	Anastasius III.		
913	Lando.		
914	John X.		
928	Leo VI.		
929	Stephen VII.		
931	John XI.		
936	Leo VII.	936	Otto I. (the Great) crowned East Frankish King at Aix.
939	Stephen VIII.		
942	Martin III.		
946	Agapetus II.		
955	John XII.		
		962	Otto I. crowned Emperor at Rome.
963	Leo VIII.		
964	Benedict V.		
965	John XIII.		
972	Benedict VI.		
		973	Otto II. (the Red).

A.D.	POPES.	A.D.	EMPERORS.
974	Boniface VII. (Antipope).		
974	Domnus II. (?).		
974	Benedict VII.		
983	John XIV.	983	Otto III.
984	Boniface VII. (returned).		
985	John XV.		
996	Gregory V.		
996	John XVI. (Antipope?).		
999	Sylvester II.		
		1002	Henry II. (the Saint).
1003	John XVII.		
1003	John XVIII.		
1009	Sergius IV.		
1012	Benedict VIII.		
1024	John XIX.	1024	Conrad II. (the Salic).
1033	Benedict IX.		
1044	Sylvester III. (Antipope).		
1044	Gregory VI.		
1046	Clement II.		
1048	Damasus II.		
1049	Leo IX.		
1055	Victor II.		
		1056	Henry IV.
1057	Stephen IX.		
1058	Benedict X.		
1059	Nicholas II.	1059	Henry III. (the Black).
1061	Alexander II.		
1061	Honorius (Antipope).		
1073	Gregory VII. (Hildebrand).		
		1077	(Rudolph of Swabia, rival).
1080	Clement III. (Antipope).		
		1081	(Hermann of Luxemburg, rival).
1087	Victor III.		
1088	Urban II.		
		1093	(Conrad of Franconia, rival).
1099	Pascal II.		
1100	Theodoric.		
1102	Albert (Antipope).		
1105	Sylvester IV. (Antipope).		
		1106	Henry V.
1118	Gelasius II.		
1118	Gregory VIII. (Antipope).		
1119	Callixtus II.		
1124	Celestine (Antipope).		
1124	Honorius II.		
		1125	Lothair II. (Saxon).
1130	Innocent II.		
1130	Anacletus II. (Antipope).		

A.D.	POPES.	A.D.	EMPERORS.
1138	Victor IV. (Antipope).	1138	Conrad III. of Hohenstauffen.
1143	Celestine II.		
1144	Lucius II.		
1145	Eugenius III.		
		1152	Frederick I. (Barbarossa) of Hohenstauffen.
1153	Anastasius IV.		
1154	Hadrian IV.		
1159	Alexander III.		
1159	Victor V. (Antipope).		
1164	Pascal III. (Antipope).		
1168	Callixtus III. (Antipope).		
1178	Innocentius (Antipope).		
1181	Lucius III.		
1185	Urban III.		
1187	Gregory VIII.		
1187	Clement III.		
		1190	Henry VI. of Hohenstauffen.
1191	Celestine III.		
		1197	Philip of Hohenstauffen. } rivals.
			Otto IV. (Welf). }
1198	Innocent III.		
		1208	Otto IV.
		1212	Frederick II. of Hohenstauffen.
1216	Honorius III.		
1227	Gregory IX.		
1241	Celestine IV.		
1241	Vacancy.		
1243	Innocent IV.		
		1246	Henry Raspe (rival).
		1246-7	William of Holland (rival).
		1250	Conrad IV. of Hohenstauffen.
1254	Alexander IV.	1254	Interregnum.
		1257	Richard, Earl of Cornwall. } rivals.
			Alfonzo, King of Castile. }
1261	Urban IV.		
1265	Clement IV.		
1269	Vacancy.		
1272	Gregory X.		
		1273	Rudolph of Hapsburg.

KINGS AND EMPERORS IN GERMANY.[1]

A. KINGDOM OF EAST FRANCIA.

Carolingian Dynasty.

	King.	Emperor.
Lewis II., the Germanic [in Bavaria 817],	843-876	
Lewis III., the Young [in Bavaria 880],	876-882	
Charles III., the Fat [in Swabia 876],	882-887	881-888
Arnulf,	887-899	896-899
Lewis IV., the Child,	899-911	

B. KINGDOM OF GERMANY AND HOLY ROMAN EMPIRE.

1. Franconian Dynasty.

Conrad I.,	911-918

2. Ludolfing or Saxon Dynasty.

	Elected or crowned King.	King.	Emperor.
Henry I., the Fowler,	919	919-936	
Otto I., the Great,	936	936-973	962-973
Otto II., the Red,	961	973-983	967-983
Otto III.,	983	983-1002	996-1002
Henry II., the Saint,	1002	1002-1024	1014-1024

3. Waiblingen, Franconian or Salic Dynasty.

Conrad II.,	1024	1024-1039	1027-1039
Henry III., the Black,	1028	1039-1056	1046-1056
Henry IV.,	1053	1056-1105	1084-1106
Rudolph of Swabia,	1077	1077-1080	
Hermann of Luxemburg-Salm,	1081	1081-1088	
Conrad, son of Henry IV.,	1087	1087-1093	
Henry V.,	1099	1106-1125	1111-1125

[1] For this table I am indebted to Stockvis, *Manuel d'Histoire de tous les Etats du Globe.*

4. Dynasty of Supplingberg (Saxon).

	Elected or crowned King.	King.	Emperor.
Lothair III., - - - - - - -	1125	1125-1137	1133-1137

5. Dynasty of Hohenstauffen (Swabian).

Conrad III., - - - - - - -	1128	1138-1152	
Henry, - - - - - - - -	1147	1147-1150	
Frederick I. (Barbarossa), - - -	1152	1152-1190	1155-1190
Henry VI., the Cruel, - - - -	1169	1190-1197	1191-1197
Frederick II., - - - - - - -	1196	1198-1245	1220-1250
Philip, brother of Henry VI., - -	1198	1198-1208	
Henry, son of Frederick II., - -	1220	1234-1235	
Otto IV. (the Welf), - - - -	1198	1198-1218	1209-1218
Conrad IV., son of Frederick II., - -	1236	1250-1254	

6. Kings of the Interregnum.

Henry Raspe of Thuringia, - - -	1246	1246-1247	
William of Holland, - - - - -	1247	1247-1256	
Richard of Cornwall, - - - -	1257	1256-1271	
Alphonse of Castile, - - - - -	1257	1257-1275	

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